1. What is a trust?

The structure of the trust relationship.

Reading: \textit{Hudson, sections 2.1 and 2.2}

"The essence of a trust is the imposition of an equitable obligation on a person who is the legal owner of property (the trustee) which requires that person to act in good conscience when dealing with that property in favour of any person (the beneficiary) who has a beneficial interest recognised by equity in the property. The trustee is said to "hold the property on trust" for the beneficiary. There are four significant elements to the trust: that it is equitable, that it provides the beneficiary with rights in property, that it also imposes obligations on the trustee, and that those obligations are fiduciary in nature."

- Thomas and Hudson, \textit{The Law of Trusts}

Classification of trusts.

Reading: \textit{Hudson, section 2.2}

The four types of trust

1. Express trusts
2. Resulting trusts
3. Constructive trusts
4. (Implied trusts)


"(i) Equity operates on the conscience of the owner of the legal interest. In the case of a trust, the conscience of the legal owner requires him to carry out the purposes for which the property was vested in him (express or implied trust) or which the law imposes on him by reason of his unconscionable conduct (constructive trust)."

(D) The means by which the different forms of trusts come into existence.

Reading: \textit{Hudson, section 2.2}

"A trust comes into existence either by virtue of having been established expressly by a person (the settlor) who was the absolute owner of property before the creation of the trust (an express trust); or by virtue of some action of the settlor which the court interprets to have been sufficient to create a trust but which the settlor himself did not know was a trust (an implied trust); or by operation of law either to resolve some dispute as to ownership of property where the creation of an express trust has failed (an automatic resulting trust) or to recognise the proprietary rights of one who has contributed to the purchase price of property (a purchase price resulting trust); or by operation of law to prevent the legal owner of property from seeking unconscionably to deny the rights of those who have equitable interests in that property (a constructive trust)."

- Thomas and Hudson, \textit{The Law of Trusts}

(E) The rudiments of express trusts.

Reading: \textit{Hudson, section 2.3}

An express trust can be understood as follows, comprising the "magic triangle" of settlor, trustee and beneficiary. The core of the "trust" is the inter-action of personal rights and claims between these persons in relation to the trust property. It is therefore vital to distinguish between "in personam" and "in rem" rights.
Significant features of the trust

- Once a trust is created, the settlor ceases to have any property rights in the trust or any control over the trust in her capacity as settlor.
- The instant that the trust is declared (or deemed to have been created in the case of a constructive or resulting trust) the legal title in the trust property is owned by the trustee(s) and the equitable interest is owned by the beneficiary(-ies).
- The trustee(s) hold the legal title in the trust property.
- The trustee(s) owe equitable obligations to the beneficiaries to obey the terms of the trust. The trustee(s) obligations are fiduciary in nature (thus requiring the utmost good faith and prohibiting any conflict of interest).
- The beneficiaries own equitable proprietary rights in the trust fund.
- There can be an infinite number of beneficiaries in theory, or there may be only one beneficiary (a bare trust).
- The same human being can be settlor, one of the trustees and also one of the beneficiaries: importantly, she will be acting in different capacities in each context (as though she were three different people). However, the same person may not be the settlor, the sole trustee and the sole beneficiary because then no property rights would have moved at all.
- The beneficiaries may fall into various classes with different qualities of rights: e.g. there may be a beneficiary entitled to the income from the trust fund during her lifetime (a “life tenant”) with the capital being divided among the other beneficiaries after her death (“remainder beneficiaries” or “remaindermen”).
- Individual items of property making up the trust fund may, if the terms of the trust permit it, be sold or exchanged for other property – that other property then becomes part of the trust fund.
- Significantly, then, more than one person can have property rights in the same property at the same time: this enables settlors to create an infinite range of property holdings to suit their circumstances.
- The trustee(s) will be personally liable for any loss caused to the trust by her/their breach of trust.

(1) Fundamental principles of trusts: the obligations of trustees and the rights of beneficiaries

Reading: Hudson, section 2.4

*Saunders v Vautier (1841) – the rights of the beneficiary
Lord Browne-Wilkinson in *Westdeutsche Landesbank v. Islington* [1996] 2 All E.R. 961, 988 sought to set out the framework upon which the trust operates:-

**THE RELEVANT PRINCIPLES OF TRUST LAW:**

(i) Equity operates on the conscience of the owner of the legal interest. In the case of a trust, the conscience of the legal owner requires him to carry out the purposes for which the property was vested in him (express or implied trust) or which the law imposes on him by reason of his unconscionable conduct (constructive trust).

‘(ii) Since the equitable jurisdiction to enforce trusts depends upon the conscience of the holder of the legal interest being affected, he cannot be a trustee of the property if and so long as he is ignorant of the facts alleged to affect his conscience …

‘(iii) In order to establish a trust there must be identifiable trust property …

‘(iv) Once a trust is established, as from the date of its establishment the beneficiary has, in equity, a proprietary interest in the trust property, which proprietary interest will be enforceable in equity against any subsequent holder of the property (whether the original property or substituted property into which it can be traced) other than a purchaser for value of the legal interest without notice.”