



# Syllabus

# STEP Advanced Certificate in Trusts: Law and Practice (Scotland)



[www.step.org/diploma](http://www.step.org/diploma)

# Trusts: Law and Practice

## Introduction

This document contains the detailed syllabus for the STEP Advanced Certificate in Trusts: Law and Practice (Scotland).

For more information about the course and how to apply, please visit the programme website: [www.cltint.com/courses/step-advanced-certificate-in-trusts-law-practice-scotland](http://www.cltint.com/courses/step-advanced-certificate-in-trusts-law-practice-scotland)



# Trusts: Law and Practice

## Module 1

### INTRODUCTION TO THE LAW OF TRUSTS (1) – STRUCTURE AND CONCEPTS

#### **This module covers:**

- The concept of a trust
- The parties to a trust
- How a trust fund works
- The purposes of trusts
- The definition of a trust
- A comparison of the trust with other similar concepts.

#### **By the end of this module you should be able to:**

- Explain the concept of a trust
- Identify the parties to a trust, and explain the rights that a trustor may have once a trust is established
- Describe what is meant by trust fund, different types of property and explain the ownership of the trust fund
- Explain the nature of trust purposes and the general rules that apply to them
- Define a trust and identify its defining features
- Explain what is meant by a fiduciary relationship
- Distinguish between trusts that apply to income and trusts that apply to capital
- Describe the nature of a beneficiary's interest in a trust
- Explain the differences between fixed and discretionary interests, vested and contingent interests
- Distinguish the trust from other similar concepts.

# Trusts: Law and Practice

## Module 2

### INTRODUCTION TO THE LAW OF TRUSTS (2) – TYPES AND USE

#### This module covers:

- The classification of trusts
- Types of trust encountered in practice
- An overview of the way in which trusts are used today.

#### By the end of this module you should be able to:

- Explain the different ways in which trusts may be classified, including the distinction between:
  - Voluntarily and involuntarily created trusts
  - *Inter vivos* and *mortis causa* trusts
  - Public and private trusts
  - Fixed interest and discretionary trusts
  - Bare trusts and purpose trusts.
- Describe the different types of trust that may be encountered, namely:
  - The life interest trust
  - The discretionary trust
  - The accumulation and maintenance trust
  - The trust for bereaved minors
  - The age 18–25 trust
  - The bare trust
  - The charitable trust
  - The protective trust
  - The trust for the disabled
  - The resulting trust
  - The fiduciary fee
  - The constructive trust.

# Trusts: Law and Practice

## Module 2

### INTRODUCTION TO THE LAW OF TRUSTS (2) – TYPES AND USE continued

- Identify some uses of trusts today, including:
  - Protection of certain people
  - Asset protection
  - Reduction of tax liability
  - Charitable or public trusts
  - Unincorporated associations
  - Partnership property
  - Sequestration
  - Pension provision
  - Investment trusts and unit trusts
  - Offshore trusts
  - Trade union funds
  - Debentures.

# Trusts: Law and Practice

## Module 3

### THE CREATION OF A TRUST

#### **This module covers:**

- Voluntarily created trusts including:
  - An overview of the procedure involved
  - Preparation of the trust deed
  - Execution of the trust deed
  - Confirmation from the trustees of their willingness to act
  - Transfer of trust property
  - Registration of trusts under HMRC's Trust Registration Service.

#### **By the end of this module you should be able to:**

- Explain the requirements to create a voluntarily created trust namely:
  - The procedure involved
  - How to prepare the trust deed
  - How the trust deed should be executed
  - How to obtain confirmation from the trustees of their willingness to act
  - How trust property is transferred
  - When to register trusts under HMRC's Trust Registration Service.

# Trusts: Law and Practice

## Module 4

### THE LIFERENT TRUST

#### **This module covers:**

- The liferent trust
- Concepts related to the liferent trust
- The rules restricting successive liferents
- The rule on apportionment.

#### **By the end of this module you should be able to:**

- Describe the concept of the liferent trust, including:
  - The interest of the liferenter
  - The interest of the fiar
- Distinguish between the income and capital of a trust
- Explain the effects of inheritance tax and of the Finance Act 2006 on liferent trusts
- Identify and describe concepts related to the liferent trust, including:
  - The proper liferent
  - The alimentary liferent
  - The flexible liferent trust
  - The protective trust
- State the rules restricting successive liferents
- Explain the rule on apportionment.

# Trusts: Law and Practice

## Module 5

### THE DISCRETIONARY TRUST

#### This module covers:

- The nature of the discretionary trust
- The choice of trustee and guidance from the truster
- Interests of beneficiaries
- Powers of the trustees
- The inheritance position of discretionary trusts
- The nature of the accumulation and maintenance trust
- Restrictions on the accumulation of income.

#### By the end of this module you should be able to:

- Describe the nature, uses and advantages of the discretionary trust
- Explain the importance of appointing trustees in whom the truster has complete confidence, and the need to allow the trustees to exercise their discretion freely to avoid the risk of the trust being classed as a sham
- Analyse the value of a letter of wishes or guidance from the truster and explain why it must not override the trustees' discretion
- Describe the extent of beneficiaries' interests to the income and capital of a discretionary trust
- Identify the discretionary powers that trustees have, and explain the distinction between administrative and dispositive powers
- Describe how to avoid the reversion of trust assets to the truster should the trust fail
- Explain the special tax regime that affects the inheritance position of discretionary trusts
- Explain how an accumulation and maintenance trust operates, the conditions imposed by the Inheritance Tax Act 1984 and how such trusts have been affected by changes in the law since the Finance Act 2006
- Identify the special rules relating to a trust for bereaved minors and an 18–25 trust
- Describe the restrictions on the accumulation of trust income, and explain the importance of the Trusts (Scotland) Act 1961 in this regard.



# Trusts: Law and Practice

## Module 6

### THE CHARITABLE TRUST

#### **This module covers:**

- Administration of charitable trusts before the Charities and Trustee Investment (Scotland) Act 2005 (2005 Act)
- Administration of charitable trusts after the 2005 Act
- Tax advantages of a charitable trust.

#### **By the end of this module you should be able to:**

- Describe how the concept of the charitable trust relates to that of the public trust
- Explain the administration of charitable trusts as it was under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990
- Explain how trusts are now administered, under the Charities and Trustee Investment (Scotland) Act 2005, including the role of:
  - The Office of the Scottish Charity Regulator
  - The Scottish Charity Register and the Charity Test
- Identify the tax advantages of a charitable trust under the 2005 Act.

# Trusts: Law and Practice

## Module 7

### THE OFFICE OF TRUSTEE

#### This module covers:

- How trustees are appointed
- Procedures for acceptance of office by trustees, and for their resignation
- What happens when trustees lose capacity or die
- Procedures for the removal of trustees
- Different types of trustee
- Remuneration of trustees
- Trustees' personal liability in contracts
- The position of third parties contracting with the trustees.

#### By the end of this module you should be able to:

- Describe the various ways in which trustees can be appointed under the Trusts (Scotland) Act 1921 and the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990
- Explain the requirement that trustees accept office and the ways in which they can do so
- Describe how trustees may resign and the potential consequences of a trustee losing capacity or dying
- Identify the circumstances in which a trustee can be removed from office under the Trusts (Scotland) Act 1921
- Define the concepts of trustees *ex officio* and trustees *sine quo non* and explain the relevant rules
- State the rules relating to the remuneration of trustees
- Explain the rules that apply to trustees who enter into contracts on behalf of the trust
- Describe the position of third parties who contract with the trustees, including the limits of the common law and statutory protection available for such parties.

# Trusts: Law and Practice

## Module 8

### TRUSTEES' DUTIES

#### **This module covers:**

- The duties with which trustees must comply
- Use of the trust deed to modify trustees' duties
- Use of trustees' immunity clauses, indemnity clauses and indemnity insurance.

#### **By the end of this module you should be able to:**

- Identify and explain the various duties with which trustees must comply, namely:
  - The duty to act *intra vires*
  - The duty of care
  - The fiduciary duty
  - The duty to act impartially between the beneficiaries
  - The duty to act personally
  - The duty to act by quorum
  - The duty to consult
  - The duty to take control of the trust property
  - The duty to comply with the terms of the trust
  - The duty to meet
  - The duty to take advice
  - The duty to invest
  - The duty to keep accounts
  - The duty to provide information
  - The duty to distribute

# Trusts: Law and Practice

## Module 8

### TRUSTEES' DUTIES continued

- Describe the ways in which trustees' duties might be amended by the trust deed, including:
  - Diluting the standard of care
  - Use of trustees' powers
  - Excluding duties
- Analyse the use, effect and limitations of trustees' immunity clauses, indemnity clauses and indemnity insurance.

# Trusts: Law and Practice

## Module 9

### TRUSTEES' POWERS

#### **This module covers:**

- Powers available to trustees
- How additional powers can be obtained by the trustees
- The distinction between dispositive and administrative powers
- The power of appropriation
- The ways in which the trustees may obtain the directions of the court.

#### **By the end of this module you should be able to:**

- Describe the powers available to trustees, including:
  - Powers available under the trust deed
  - Powers available under section 4 Trusts (Scotland) Act 1921
  - Powers available under the Charities and Trustee Investment Act 2005
  - Powers previously available under the Trustee Investment Act 1961 and the types of investment covered
- Distinguish between dispositive powers and administrative powers
- State the use and effect of a power of appropriation
- Describe the ways in which the trustees can obtain the directions of the court.

# Trusts: Law and Practice

## Module 10:

### BREACH OF TRUST

#### This module covers:

- The different types of breach of trust that can occur and their effects
- Remedies that will be open to the beneficiaries of a trust where a breach of trust has occurred
- A trustee's liability for the acts of others and for omissions
- The protections available to trustees who face an action for breach of trust.

#### By the end of this module you should be able to:

- Describe the different types of breach of trust that can occur
- Explain the effect of an ultra vires breach of trust, an intra vires breach of trust and a breach of the fiduciary duty
- Summarise the remedies that will be open to the beneficiaries of a trust where a breach of trust has occurred, including:
  - Interdict
  - Damages
  - Accounting
  - Removal
  - Reporting
- Explain a trustee's liability for the acts of others and for omissions, and the limitations of this liability under the Trusts (Scotland) Act 1921
- Summarise the protections available to trustees facing an action for breach of trust, including:
  - Protection afforded by the trust deed
  - Protection afforded by statute.

# Trusts: Law and Practice

## Module 11

### VARIATION OF TRUSTS

#### This module covers:

- The means of varying the terms of private trusts
- The means of varying the terms of public trusts.

#### By the end of this module you should be able to:

- Describe the means by which a private trust can be varied, including:
  - Exercise of trustees' powers within the trust deed
  - Exercise of beneficiaries' powers
  - Variation of trust with consent of all beneficiaries
  - Application to court under section 1(1) Trusts (Scotland) Act 1961
  - Application to court under section 1(4) Trusts (Scotland) Act 1961
  - Application to court under section 5 Trusts (Scotland) Act 1921
  - Application to court under section 16 Trusts (Scotland) Act 1921
- Identify the means by which a public trust can be varied, including:
  - An application for *cy-près*
  - An application under section 39 Charities and Trustee Investment (Scotland) Act 2005
  - An application under section 9 Law Reform (MP) (Scotland) Act 1990
  - The procedure under section 10 Law Reform (MP) (Scotland) Act 1990
  - The procedure under section 11 Law Reform (MP) (Scotland) Act 1990
  - Application to court under section 5 Trusts (Scotland) Act 1921
  - Use of a private Act of Parliament
  - Application under *nobile officium* to provide machinery.

# Trusts: Law and Practice

## Module 12

### EFFECTIVE TRUST DRAFTING

#### **This module covers:**

- General principles of drafting trust documentation
- Specific issues encountered when drafting various types of trust
- Other clauses in the trust deed
- Drafting of ancillary trust documentation.

#### **By the end of this module you should be able to:**

- Explain the general principles of drafting trust documentation, including determining the client's requirements, avoiding blind adherence to precedents, and the need to explain the draft trust deed to the client
- Describe specific issues encountered when drafting liferent trusts, including the different kinds of liferents, the need for flexibility, and issues surrounding vesting
- Describe specific issues encountered when drafting discretionary trusts, including the importance of dispositive powers and choice of accumulation period
- Identify the requirements under the Inheritance Tax Act 1984, that are applicable when drafting other trusts, such as those for bereaved minors, or age 18–25 trusts
- Analyse drafting issues relating to other clauses in the trust deed, such as those concerned with the trustees' powers, immunity and indemnity clauses, and the exclusion of the truster
- Explain drafting issues for ancillary trust documentation, such as minutes of trustees' meetings, records of changes of trustees, and deeds of appointment.



# Trusts: Law and Practice

## Module 13

### RISK MANAGEMENT FOR TRUST ADVISERS

#### **This module covers:**

- Matters relating to risk management for trust advisers.

#### **By the end of this module you should be able to:**

- Identify and explain the issues relating to risk management for trust advisers including:
  - Issues that arise where a trust adviser acts as a trustee
  - Issues to be considered when providing advice to the trustees in terms of:
    - Money laundering and proceeds of crime regulations
    - Terms of business and remit
    - Taking instructions
    - Giving advice
- State the ways in which to minimise risk when acting as an adviser to the beneficiaries of a trust including:
  - The use of centralised structures to manage risk
  - The use of technology in trust management.

# Contact us

**For full details of the programme visit:**

[www.cltint.com/courses/step-advanced-certificate-in-trusts-law-practice-scotland](http://www.cltint.com/courses/step-advanced-certificate-in-trusts-law-practice-scotland)

**If you have any queries please contact us:**

Email: [cltinternational@centlaw.com](mailto:cltinternational@centlaw.com)

Phone: +44 (0) 121 362 7733

CLT International Ltd, Wilmington plc

Fort Dunlop | 6th Floor | Fort Parkway

Birmingham | B24 9FD | United Kingdom



[www.step.org/diploma](http://www.step.org/diploma)