

3.87 That decision of Glazebrook J was appealed to the Court of Appeal,⁹⁷ which made important rulings in respect of the term *settlor* both in general and in particular for the purposes of tax legislation. The case concerned a charitable trust which operated gambling machines. Although Mr Sloan was not named as settlor in the trust deed, he was in reality the person who instigated the setting up of the trust, sold the machines to the trust and owned the premises where they were operated.

3.88 The Court of Appeal agreed that the relevant tax provisions were intended to prevent tax exemptions from being obtained in cases where those in particular positions of influence in respect of a charity are able to derive benefits for themselves. The Court of Appeal made the following findings:

- Sloan was deemed to have been a settlor of the trust in that over a period he disposed of assets to the trust (lending money) and retained or reserved an interest in that asset because he was entitled to be repaid.
- The Court was not bound by the terms of the trust deed in determining who the settlor was. In a practical sense the person who settled the trust with the assets that enabled it to conduct its business and fulfil its purposes was Sloan. It was not clear whether the money for the gaming machines was a gift or a loan. Either way Sloan was the settlor.
- It is possible for a settlor to settle property on an existing trust.
- Sloan as settlor was able to determine or materially influence the nature or amount of any benefit or income from the business conducted by the trust. The legislation is directed at the ability to influence benefits rather than the actual payment of them. The exemption was therefore lost for certain periods.

3.89 For tax purposes the 'settlor' includes any person who disposes of property to a trust for less than market value, provides financial assistance at less than market value, provides services at less than market value or acquires trust property or services at greater than market value.⁹⁸ Settlor is defined in s 1 of the Income Tax Act 2007 and is extended in ss HC 27 and YB 10. It includes a person who transfers value to, for the benefit of and on the terms of the trust.

3.90 It is not as common now to have a nominee or notional settlor in a trust deed as it was in the past. The settlor can be a beneficiary and a trustee but it is generally accepted that the settlor should not be the sole trustee and sole beneficiary — see Chapter 1.

3.91 It is worth noting that each payment or transfer of funds or assets to a trust is a separate settlement.⁹⁹

97 *CIR v Dick* [2003] 1 NZLR 741.

98 See *Law of Trusts*, LexisNexis, at [7.2.4].

99 See *Kidd v Van den Brink* [2010] NZCA 169.

Chapter 4

The Three Certainties

Introduction

It is open to the courts to find that a trust was not validly established and therefore that it does not exist. In order for a valid express trust to exist, in addition to any necessary formalities, such as the requirements under the Wills Act 2007 for the valid creation of a will and the requirements under the Property Law Act for trusts including land as trust property, the 'three certainties' ... must be met. These are the certainty of intention, the certainty of subject matter and the certainty of objects.¹

4.1 Before a trust is created, certain formalities such as the valid transfer of property must have been complied with, there must be no breach of the laws concerning perpetuities and the three certainties must exist. They are:

- certainty of intention;
- certainty of subject-matter;
- certainty of objects.

4.2 Charitable trusts enjoy certain exemptions (for example, non-compliance with laws concerning perpetuities; exemption from income tax if registered under the Charities Act 2005) and there are anomalous cases in respect of certainty of objects. For this reason charitable trusts are dealt with separately in Chapter 12.

Certainty of intention

4.3 A trust may be created by any language that is clear enough to show an intention to create it. No special technical words are required; any apt words will do.² The intention must be clear, for a Court cannot hold that a trust exists unless it is satisfied that a trust was intended. The words 'upon trusts for', 'in trust for', 'on trust for', are the terms most commonly used. When these words are used there is usually no doubt of the intention so far as the language is concerned. Although, in *Tito v Waddell (No 2)*³ Megarry V-C held that the words 'in trust' contained in a colonial ordinance did not give rise to a trust or fiduciary obligation binding on the Crown. It was a governmental obligation or statutory duty rather than a true trust or fiduciary obligation.

- 1 NZ Law Commission 'Review of the Law of Trusts: Preferred Approach Paper' NZLC IP31 at para 2.19.
- 2 *Lyell v Kennedy* (1889) 14 App Cas 437 (Lord Selborne); *Solicitor-General v Wanganui Borough* [1919] NZLR 763, [1920] GLR 145 (CA); *Belton v Commissioner of Inland Revenue* [1959] NZLR 1372; *Re Armstrong* [1960] VR 202; *Re Kayford Ltd* [1975] 1 All ER 604; *Brisbane City Council v A-G for Queensland* [1978] 3 All ER 30.
- 3 *Tito v Waddell (No 2)* [1977] 3 All ER 129, 230.

4.4 In *Wellington Harness Racing Club Inc v Hutt City Council*,⁴ it was argued that the use of the words 'In Trust' in a Crown grant established a trust in the chancery, equity (or private law) sense of that concept. Hammond J held (despite a concession from the Council's lawyer) that the word 'trust' is capable of more than one meaning. In that case, he held that the word 'trust' had been used in a specific statutory scheme but there was not an independent free-standing trust in the equity sense.⁵ Hammond J went on to hold that in any event Parliament can specifically legislate to terminate or extinguish a trust.

4.5 Under the old deeds system of law ownership, it was possible for the deed of conveyance to record that the transferees held the law as trustees. This made it clear they were not the beneficial owners.⁶ In *Robertson v Official Assignee*⁷ the trustees were F, his wife and an accountant. The trustees signed a resolution recording the transfer to the trust of the proceeds of sale of shares previously in F's name. F subsequently became bankrupt and the Official Assignee challenged the transaction. Neither the High Court nor the Court of Appeal was satisfied that F had made an irrevocable declaration of trust. He had signed the resolution as a trustee and not in his personal capacity as owner of the shares. F had not completed the gift.

4.6 As the language of documents, especially of wills, varies infinitely, it is sometimes very difficult to decide in a given case whether a trust was intended.⁸ Will-makers, especially where they make their own wills, frequently use language that is vague or ambiguous or use expressions inconsistent with other expressions in the same document. People often use technical terms that they have become slightly acquainted with but do not really understand.

4.7 In *Baird v Baird*⁹ the deceased as a member of a pension scheme was able to nominate who received his benefits on his death. The deceased's nomination did not comply with the requirements of the relevant wills' legislation but the nomination was still upheld because in that case the nomination was not a testamentary disposition. In contrast in *Hiranand v Harilela*¹⁰ a document alleged to be signed by the deceased was not witnessed and therefore was not a valid testamentary document. The document was testamentary in nature and the deceased intended that it take effect only on his death. The Court held that the document could not take effect as a declaration of trust because it was intended only to take effect as a will but failed to meet the legal requirements for a will.

4.8 An intention to create a trust can be inferred from conduct.¹¹ It can also be inferred from the form of the gift itself.¹² In *Re Kayford Ltd*¹³ a mail-order business had a system where the customers paid in advance and the payments were put into a 'customer trust deposit account' with the intention of refunding these payments

4 *Wellington Harness Racing Club Inc v Hutt City Council* [2004] 1 NZLR 82.

5 *Wellington Harness Racing Club Inc v Hutt City Council* [2004] 1 NZLR 82 at [61].

6 The Land Transfer Act 1952 does not permit reference to a trust on land titles.

7 *Robertson v Official Assignee* [2008] NZCA 500.

8 See *Marsh v Taranaki Education Board* [1918] GLR 122; *In re Power, Power v Power* [1919] NZLR 761, [1919] GLR 451; *In re Engelbach's Estate* [1924] 2 Ch 348.

9 *Baird v Baird* [1990] 2 AC 548.

10 *Hiranand v Harilela* (2004) 7 ITELR 450.

11 *Paul v Constance* [1977] 1 All ER 195.

12 *Burrough v Philcox, Lacy v Philcox* (1840) 5 My & Cr 72.

13 *Re Kayford Ltd* [1975] 1 WLR 279, [1975] 1 All ER 604 (Megarry J).

if the goods ordered could not be supplied. The company went into liquidation and the issue was whether the money in the bank account was held on trust for the customers who made the payments or was a company asset. The Court held that a trust had been created:¹⁴

It is well settled that a trust can be created without using the words 'trust' or 'confidence' or the like; the question is whether in substance a sufficient intention to create a trust had been manifested ... payment into a separate bank account is a useful (though by no means conclusive) indication of an intention to create a trust.

4.9 In *Morrison Kent v The Commerce Commission and Others*,¹⁵ A Ltd promoted and received payments from the public for an air show 'Wings over Waikato'. A Ltd placed the money from the ticket sales into its 01 account; money from other sources was paid into its 00 account and used to pay general expenses. A Ltd went into liquidation and the question was whether the funds in the 01 account were held on trust for ticket holders and therefore not available for other creditors of the company. The Court considered it very important that the company did not use the proceeds of the ticket sales for company creditors; they were used only for expenses relating to 'Wings over Waikato'. The Court decided that the company intended to hold the funds in the 01 account in trust for ticket holders. The fact that this intention was not communicated to anyone did not prevent the existence of a binding trust.

4.10 In *Levin & Jordan v Ikiua*¹⁶ the lack of resolutions did not prevent the finding that there was a declaration of trust by conduct. There was evidence of an intention to operate a corporate trustee. Other factors such as interaction with Inland Revenue, financial statements and directors' minutes all pointed to the existence of a trading trust.

4.11 A contrasting case is *Fortex Group*,¹⁷ where the Court ruled that employee superannuation contributions banked by Fortex into its general bank account were not held by the company as trustee because there was no evidence that Fortex intended to constitute itself trustee of the retained funds.

4.12 In *Thexton v Thexton*¹⁸ evidence showed that it was intended David Thexton Senior would hold 50 per cent of the shares in a family company, when he became an employee. A memorandum supported this and there was reference to David Thexton Senior holding 50 per cent of the company shares in a eulogy delivered at his funeral. However, the transfer of the shares was never effected. Salmon J stated:¹⁹

A declaration of trust does not require a technical form of expression, it is a question of construction whether the words used, taking into account the surrounding circumstances, amount to a clear declaration of trust ... where no words exhibiting

14 *Re Kayford Ltd* [1975] 1 WLR 279 at 282, [1975] 1 All ER 604 at 607.

15 *Morrison Kent v The Commerce Commission and Others* (Unreported, High Court, Auckland, CIV-2009-404-001553, 21 July 2009).

16 *Levin & Jordan v Ikiua* [2010] NZCA 509.

17 *Fortex Group Ltd (in receivership and liquidation) v MacIntosh* [1998] 3 NZLR 173.

18 *Thexton v Thexton* [2001] 1 NZLR 237.

19 *Thexton v Thexton* [2001] 1 NZLR 237 at 247.

Chapter 20

Duties of Trustees

Introduction

20.1 Trustees have certain general duties in relation to the trust fund and assets and towards the beneficiaries. Trustees are required to administer the trust in accordance with the trust instrument, if any, and in accordance with the provisions of the general law. Beneficiaries have the right to have the trust administered in accordance with the general law.¹ A few duties are said to be so basic that without them there can be no trust:²

There is an irreducible core of obligations owed by the trustees to the beneficiaries and enforceable by them which is fundamental to the concept of a trust. If the beneficiaries have no rights enforceable against the trustees there are no trusts.

20.2 It is important to recall the distinction between an executor (acting as such) and a trustee. The essential duties of an executor are:

- (a) to collect and get in the assets of the deceased;
- (b) to pay the funeral and testamentary expenses and debts; and
- (c) to discharge the legacies.³

20.3 In this chapter, however, we deal with the general duties of *trustees*. These are:

- (a) Know the terms of the trust.
- (b) Follow the terms of the trust.
- (c) Distribute only to the proper beneficiaries.
- (d) Impartiality or even-handedness.
- (e) Prudent investment.
- (f) Keep accounts and provide information.
- (g) Diligence and prudence.
- (h) Act personally and if there is more than one trustee jointly and unanimously.
- (i) Keep custody and control of title documents.
- (j) No profit or remuneration.
- (k) Self-dealing and fair-dealing rules.

¹ N Richardson, *Nevill's Law of Trusts, Wills and Administration*, 10th ed, LexisNexis, Wellington, 2010, p 217; *Target Holdings Ltd v Redfern* [1996] 1 AC 421.

² *Armitage v Nurse* [1998] Ch 241 (CA).

³ *Re Branson (deceased)* (1911) 31 NZLR 79 at 82; *Hansen v Young* [2004] 1 NZLR 37.

20.4 These duties may be described as the default position. They apply in so far as the terms of the trust do not say otherwise. The duties which the terms of the trust may not override are indicated in para 20.1.

Know the terms of the trust

20.5 The first duty of a trustee is to become thoroughly acquainted with the terms of the trust which he or she has undertaken to carry out. This includes all documents, papers, and deeds relating to or affecting the trust property which come into the trustee's possession and control.⁴

20.6 It is necessary that trustees should know precisely the nature and circumstances of the trust property, and that they should know exactly what they are required to do with that property.⁵ It might seem obvious that this is the first duty of a trustee; but the law reports show very clearly that people constantly undertake the office of trustee and neglect to inform themselves sufficiently as to the duties they are to perform. Every trustee should be acquainted with every instruction and direction contained in the documents under which he or she is acting as trustee and should keep these in mind. As has been said, the trustee must not only acquire a full and exact knowledge of the contents of the trust instrument, whether deed or will, 'but he must never forget it'.⁶

20.7 A trustee replacing a previous trustee is not required to 'hunt for breaches of trust committed by former trustees since they can assume their predecessors acted properly in the absence of circumstances indicating a breach of trust or possible breach'.⁷ However, if there are suspicious circumstances and there is a loss to the estate because of failure to inquire, a new trustee may be liable even though the new trustee took no part in committing the original breach of trust.⁸ A trustee should undertake reasonable researches into the trust's history.⁹ If the trustee has reasonable doubts as to the scope of powers available then advice should be obtained.¹⁰

20.8 As mentioned in Chapter 15, trustees must not make a profit for themselves out of the trust fund or out of the office of trustee. Therefore, a potential trustee should find out whether he or she is about to be put into a position where there is a possible conflict between personal self-interest and fiduciary duty. In that case the potential trustee should refuse the trusteeship unless the conflict is clearly authorised by the terms of the trust.¹¹

⁴ *Hallows v Lloyd* (1888) 39 Ch D 686 at 691.

⁵ *Harvey v Olliver* (1887) 57 LT 239 at 241.

⁶ See the fifth edition of this book, p 246.

⁷ D Hayton, P Matthews, C Mitchell, Underhill & Hayton *Law of Trusts and Trustees*, (18th ed, LexisNexis, London, 2010), para 42.25.

⁸ *Harvey v Olliver* (1887) 57 LT 239; D Hayton, P Matthews, C Mitchell, Underhill & Hayton *Law of Trusts and Trustees*, (18th ed, LexisNexis, London, 2010), para 42.25.

⁹ N Richardson, *Nevill's Law of Trusts, Wills and Administration*, 10th ed, LexisNexis, Wellington, 2010, at para 8.1.

¹⁰ *Nestlé v National Westminster Bank* [1993] 1 WLR 1260 at 1265, [1994] 1 All ER 118 at 133.

¹¹ D Hayton, P Matthews, C Mitchell, Underhill & Hayton *Law of Trusts and Trustees*, (18th ed, LexisNexis, London, 2010), para 42.1; see also para 11.8.5 of this text.

20.9 In *Edge v Pensions Ombudsman*¹² at the relevant time there were 20 managing trustees: nine appointed by the employers; nine appointed from the employees; and two from those interested in a shared fund. There were no trustees from a class of 'pensioners' and those leaving service before 1 April 1994. A decision was made to amend the pension scheme so that employer and employee contributions were reduced and an additional credit provided to members in service as at 1 April 1994. A number of pensioners did not receive the benefit of that credit and challenged the decision.

20.10 The Court of Appeal affirmed the decision of Sir Richard Scott VC¹³ that the rules specified the composition of the board and it was inevitable that certain decisions would be perceived as favouring one interest at the expense of another. The onus was on those seeking to challenge the decision to establish that it had been reached improperly and not on the trustees to justify their decision. The challenge was rejected.

20.11 Where the settlor knows the relevant facts but still appoints an interested party as trustee, the conflict of interest may be authorised but it is always better to avoid this issue with express authority in the trust instrument.¹⁴ A trustee should also check whether there is a sensible possibility that the validity of the trust or transfer of property to the trustees could be attacked.¹⁵ This point is discussed further at paras 20.157–20.185.

Follow the terms of the trust

20.12 The second duty of trustees is to adhere rigidly to the terms of the trust.¹⁶ This also would seem to follow as a matter of course. A trustee undertakes a certain trust — that is, the trustee undertakes to carry out the wishes of the settlor as expressed in a deed or a will, and having undertaken to do this, is bound by this undertaking:

The ... duty of a trustee is to adhere to the terms of his trust in all things, great and small, important and seemingly unimportant. This is his very plainest duty; no trustee would ever deny it, or pretend to be ignorant of it, yet it is his hardest, unless from the very beginning he makes up his mind to it, and then it is as easy as eating bread and butter.¹⁷

20.13 The rule that the trustee must strictly conform to and carry out the terms of the trust modifies all other rules because these other rules are applied subject to the terms of the trust. A trustee who departs from the strict terms of the trust does so at the trustee's risk. Thus, if trustees are directed to realise certain assets and

¹² *Edge v Pensions Ombudsman* [2000] Ch 602, [1999] 4 All ER 546.

¹³ *Edge v Pensions Ombudsman* [1998] 2 All ER 547.

¹⁴ See D Hayton, P Matthews, C Mitchell, Underhill & Hayton *Law of Trusts and Trustees*, (18th ed, LexisNexis, London, 2010), para 42.2–42.3.

¹⁵ See D Hayton, P Matthews, C Mitchell, Underhill & Hayton *Law of Trusts and Trustees*, (18th ed, LexisNexis, London, 2010), para 42.1.

¹⁶ *Attorney-General v Downing* (1767) Wilm 1 at 23; *Raby v Ridehalgh* (1855) 7 De GM & G 104 at 108.

¹⁷ As quoted in the fifth edition of this book at p 246 and attributed to Mr Birrell *The Duties and Liabilities of Trustees*, p 22.

jurisdiction in many situations. For example, the High Court may approve schemes to vary charitable trusts under the Charitable Trusts Act 1957.⁶⁵

Termination of trust

29.49 As with any other type of trust, where the trust is truly dysfunctional, one solution may be to wind up the trust.⁶⁶ However, this may not be appropriate where the main assets are Maori land. As Judge Harvey explained:⁶⁷

... it is important to underscore that the Court does not terminate trusts lightly. There is also good reason for that. Trustees often enter into obligations with third parties including leases, mortgages, licenses and related forms of binding legal obligations. The termination of a trust would not alter those obligations. Moreover, the Court would need to be satisfied that there was sufficient support from amongst the owners, having regard to the nature of the matter, to entertain an application for termination of trust in any circumstances let alone those like the present case.

65 *Re Tuhoë Charitable Trust Board* [2012] NZHC 1952.

66 Section 241 Te Ture Whenua Maori Act 1993.

67 *Lake Taupo Forest Trust, Livingstone v Trustees of Lake Taupo Forest Trust* (Maori Land Court Aotea, A20110005659, 21 December 2012).

Chapter 30

Trustee Corporations

What is a trustee corporation?

30.1 The idea of a corporation established for the purpose of acting as trustee was a development of the late 19th century. New Zealand cannot claim to have come up with this idea first: the Board of Executors concept had previously been developed in South Africa. However New Zealand was the first country to appoint a Public Trustee, a public official available to act as trustee. Importantly, the Public Trustee was established as a corporation so that appointment as trustee did not end when the current office holder retired or died.

30.2 The idea of a corporate trustee has achieved wide-spread acceptance in more recent times. As noted in para 27.87, there are now three types of corporate trustee in common use:

- The recognised *trustee corporations* as defined in the Trustee Act 1956;
- Companies established by accountants and law firms – and some other trust service providers – to act as trustee of various trusts established for their clients; and
- One-off companies each set up to act as trustee of a single trust (or at most two or three trusts).

30.3 It is the first of these categories, the statutory trustee corporations, which is the subject of this chapter.

30.4 The Trustee Act 1956 provides in s 2 that:

trustee corporation means Public Trust or the Maori Trustee or any corporation authorised by any Act of the General Assembly to administer the estates of deceased persons and other trust estates

30.5 It therefore includes each of the companies listed in the Trustee Companies Act 1967.

30.6 The statutory trustee corporations can thus be divided into two groups:

- The Crown entities, Public Trust and the Maori Trustee; and
- The companies authorised by Act of Parliament to act as executor and trustee.

30.7 This latter group of companies each has its own Act of Parliament. However the powers of these trustee companies are largely governed by the Trustee Companies Act 1967.

30.8 Currently this legislation still refers to five trustee companies:

- (a) The New Zealand Guardian Trust Company Limited;
- (b) Trustees Executors Limited;
- (c) Perpetual Trust Limited;
- (d) Permanent Trustees Limited;
- (e) PGG Trust Limited.

30.9 In practice, there are really only three such trustee companies now. Permanent Trustees Limited is a wholly owned subsidiary of Public Trust. Perpetual Trust has taken over the functions of PGG Trust Limited.¹

30.10 Apart from the Maori Trustee, all of the trustee corporations have, from time to time, changed their name. The following table shows the correct names and the former names:²

Current name of corporation	Previous names
Public Trust	Public Trustee of New Zealand Public Trust Office
The New Zealand Guardian Trust Company Ltd	New Zealand Insurance Company (Trust Dept) South British Guardian Trust Company The Guardian, Trust, and Executors Company of New Zealand (Limited)
Trustees Executors Limited	Tower Trust Limited The Trustees, Executors and Agency Company of New Zealand (Limited)
Perpetual Trust Limited	AMP Perpetual Trustee Company NZ Limited The Perpetual Trustees Estate & Agency Company of New Zealand Limited PGG Trust Limited Pyne Gould Guinness Limited (Trust Dept)
New Zealand Permanent Trustees Limited (now wholly owned by Public Trust)	East Coast Permanent Trustees Limited

¹ PGG Trust Limited was struck off the companies register in 1998.

² Earles, Douglas, Kelly & Kelly, *Dobbie's Probate and Administration Practice*, 5th ed, LexisNexis, Wellington, 2008.

30.11 The business of the trustee corporations is now usually considered as comprising two types of business: personal trusts and corporate trust business. The personal business is governed by the Trustee Companies Act and Public Trust Act. They comprise functions such as acting as executor or administrator of estates, trustee of inter vivos trusts, property manager under the Protection of Personal and Property Rights Act 1988, agent and attorney (under an Enduring Power of Attorney or a simple power of attorney) and similar. The corporate trust functions are governed by the Security Trustees and Statutory Supervisors Act 2011. Public Trust, Guardian Trust and Trustees Executors Ltd have all been issued with licences under that Act by the Financial Markets Authority.

Public Trust

30.12 The historical origins of the Public Trustee and the Public Trust Office are outlined at para 30.59. In 2001, the previous Act³ was replaced with a new Public Trust Act 2001 and the organisation's name was officially changed to Public Trust. References in previous documents to the Public Trustee or the Public Trust Office⁴ must be read as a reference to Public Trust.⁵ The primary duties of Public Trust are set out in Part 5 of the Act. Public Trust is able to act as executor, administrator/trustee, manager, agent, attorney and in a variety of other fiduciary capacities.⁶ Public Trust is also able to be appointed in a number of other similar capacities such as guardian, next friend or guardian ad litem, agent for re-sealing, receiver, arbitrator or to represent a party in proceedings.⁷

30.13 Under s 9 Public Trust Act 2001, the objectives of Public Trust include operating as an effective business, being as efficient as comparable businesses, prudently managing its assets and liabilities and maintaining long-term financial viability, being a good employer and exhibiting a sense of social responsibility.

30.14 Originally Public Trust was only authorised to act alone as sole trustee, executor or other fiduciary appointee. In order to accommodate will-makers who wished to name a family member to work with Public Trust, the concept of advisory trustee was developed. This appears to be a New Zealand innovation. The concept was first introduced in the Public Trust legislation but the Trustee Act 1956 opened the concept to all trustees.

30.15 For many years now, Public Trust has been able to act either alone or jointly with another trustee, executor or other fiduciary.⁸ In this situation Public Trust will receive money, give receipts and hold relevant securities.⁹

30.16 The court has also exercised its power under s 51 of the Trustee Act 1956 to appoint Public Trust in place of the existing trustees, despite Public Trust not meeting the requirements for new trustees under the terms of the trust.¹⁰

³ Public Trust Office Act 1957.

⁴ These were formally dissolved under s 151 Public Trust Act 2001.

⁵ Section 152 Public Trust Act 2001.

⁶ Section 75(1) Public Trust Act 2001.

⁷ Section 75(2) Public Trust Act 2001.

⁸ See now s 75(3) Public Trust Act 2001.

⁹ Section 90 Public Trust Act 2001.

¹⁰ *Attorney-General v Ngati Kerewa and Ngati Tahinga Trust* (High Court Auckland, M 2073/99, 5 and 19 November 2001).