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Update Summary

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THE LAW OF TRUSTS

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“Trustees Powers – Administrative and Distributive” has been comprehensively reviewed and updated by Professor Emeritus Michael Bryan.

Highlights of the update feature detailed discussion of new and revised commentary, including the following:

- Default powers, see **[12.020]**, adding *Van Der Made v Crow* [2024] NSWSC 1240
- Force of statutory powers, see **[12.030]**, adding reference to s 4(4) of the *Trusts Act 1973* (Qld)
- Powers of the court to confer powers on trustees, see **[12.070]**, adding reference to several more cases including *Hancock v Rinehart* [2015] NSWSC 646 and *Application of DEK Technologies Pty Ltd as trustee for DEK Technologies Unit Trust (No 2)* [2023] NSWSC 594
- Restrictions on the court's powers, see **[12.110]**, adding *Kelly v Connell as Executor of the Estate of Kelly* [2024] WASC 27
- New South Wales – ss 82, 82A and (ACT) – ss 82, 82A, see **[12.9130]**, adding *Robert Thomas Grant as trustee of the Grant Testamentary Trust* [2013] NSWSC 1603
- Details of the power to compromise, Introduction, see **[12.9850]**, adding *Re Doolan* [2023] NSWSC 320 and others
- Permissible objects of the maintenance power, see **[12.12180]**, referring to s 42A in the NSW Act
- Powers of advancement out of capital, Introduction, **[12.12510]** adding new subheading:
 - The power of advancement and financial provision legislation
- Trustees' discretions relative to express powers conferred on them to pay trust moneys to ascertainable beneficiaries – often called discretionary trusts, see **[12.14150]**, adding *Finch v Telstra Super Pty Ltd* (2010) 242 CLR 254
- Introduction, Superannuation fund trusts, see **[12.14300]**, adding *Finch v Telstra Super Pty Ltd* (2010) 242 CLR 254
- Honesty, good faith, integrity and fairness, see **[12.14510]**, adding the following subheadings:

- Superannuation trust funds
- Charitable trusts
- Impugning the exercise of trustees' discretions, see [12.14530], adding *Hitchcock v Pratt Group Holdings Pty Ltd as trustee for the Pratt Holdings Trust* [2024] NSWSC 1292 and *Eclairs Group Ltd v JKX Oil & Gas plc* [2015] UKSC 71
- The Appeal judgments, see [12.14720]
- Void at law, voidable in equity, see [12.14780]
- The taxation context, see [12.14810]
- Acceptance in Australia?, see [12.14830]
- Standard of proof, see [12.14850], Further reading
- Injunction to prevent apprehended misuse of discretionary power, see [12.14910].

New paragraphs include:

- The relevance of professional advice provided to trustees, see [12.14790], referring to *Fischer v Nemeske Pty Ltd* (2016) 257 CLR 615
- Identification of the trust property advanced, see [12.12520].

