

PRESENTER



Mike Lennard, Stout Street Chambers, Wellington

Mike is a litigation lawyer, specialising in tax and civil cases. His career to date has involved eight years' practice as a Crown prosecutor and civil litigation lawyer, then eight years as head of litigation for Inland Revenue, and practice at the independent bar since June 2004. Mike's practice includes intellectual property, competition law, professional negligence, constructive trust and relationship property litigation. He has a particular interest in financial regulatory and criminal issues, including money laundering and administration of the AML/CFT legislation.

CONTENTS

1. INTRODUCTION.....	1
2. CATEGORISATION AND CONTEXT: CONSTRUCTIVE AND OTHER TRUSTS.....	3
EXPRESS TRUST	3
TRUSTS ARISING BY OPERATION OF LAW	4
<i>Resulting trusts</i>	4
<i>Constructive trusts</i>	4
3. INSTITUTIONAL CONSTRUCTIVE TRUSTS.....	5
<i>ATTORNEY GENERAL FOR HONG KONG V REID</i>	5
WHAT A CLAIMANT MUST PROVE: INSTITUTIONAL CONSTRUCTIVE TRUSTS IN DE FACTO CASES	5
CONSTRUCTIVE TRUSTS: MEANS TO AN END	6
CONSTRUCTIVE TRUST ON AN EXPRESS TRUST	7
CONSEQUENCES OF A CONSTRUCTIVE TRUST FOR THE CONSTRUCTIVE TRUSTEE	8
CONSTRUCTIVE TRUST ARISES BY OPERATION OF LAW FROM THE DATE OF THE CIRCUMSTANCES WHICH GIVE RISE TO IT	8
4. REMEDIAL CONSTRUCTIVE TRUSTS.....	9
<i>FORTEX GROUP</i>	9
UNJUST ENRICHMENT.....	10
UNCONSCIONABILITY.....	10
REMEDIAL CONSTRUCTIVE TRUSTS: RECENT NEW ZEALAND DECISIONS	10
<i>Regal Castings Ltd v Lightbody</i>	10
<i>Simpson v Jenks</i>	11
<i>Graham v Arena Capital Limited (In Liquidation)</i>	11
<i>Mamat v Mamat</i>	11
REMEDIAL CONSTRUCTIVE TRUSTS: UNITED KINGDOM	11
REMEDIAL CONSTRUCTIVE TRUSTS: INSOLVENCY	13
5. TRACING.....	15
<i>FOSKETT V McKEOWN</i>	15
FIRST IN: FIRST OUT	16
BACKWARD TRACING: <i>FEDERAL REPUBLIC OF BRAZIL V DURANT INTERNATIONAL CORPORATION</i>	17
BACKWARD TRACING: NEW ZEALAND	18
6. CONCLUSION AND COMMENT	19