

CONTENTS

TRUSTS CAN SURVIVE A RELATIONSHIP BREAKDOWN – MYTH OR REALITY?	1
HOT OFF THE JUDICIAL PRESS.....	1
PETRODEL – “FAIRNESS” VS. FORM	2
<i>Petrodel – Family Division</i>	2
<i>Petrodel – Court of Appeal</i>	2
<i>Petrodel – Supreme Court</i>	3
NO INTENTION/SHAM AND FAIRNESS RISKS – <i>CLAYTON V MCGLOSKEY</i>	5
SHAM/ILLUSORY TRUST DISTINCTION	9
<i>A confusion of labels?</i>	10
CLAYMARK TRUST – S 182 CLAIMS.....	11
CONCLUSION ON NO TRUST CREATED/SHAM AND FAIRNESS RISKS	12
THEMES	13
LESSONS FOR TRUSTEES AND THEIR ADVISORS AT THE STRUCTURING AND ADMINISTRATION STAGE	13
THE DRAFTING PERSPECTIVE	13
<i>Law Commission Proposals</i>	14
ADMINISTRATION PERSPECTIVE.....	16
FAIRNESS PERSPECTIVE.....	16
THE TRUSTEES’ ROLE – TIPS FOR TRUSTEES AND TRUST ADVISORS	17
<i>Recent cases – high standards imposed on trustees and their advisors</i>	18
LESSONS TO BE LEARNT	19
AFTER THE SPLIT – WHEN THE INDEPENDENT TRUSTEE/ADVISOR IS TOLD THE SPOUSES HAVE SPLIT.....	20
<i>Conflict of interest issues</i>	20
<i>Separate representation</i>	20
<i>Independent advice</i>	21
CONCLUSION	21
APPENDIX “A” – ANALYSIS OF TRUST DEEDS IN CLAYTON AND HOTCHIN.....	23