

Equity and Trust Law in the UK: Liability Essay

The trust relationship between the parties has existed in the UK law for nearly a century, marked by the Trustee Act of 1925. While holding one's property for another individual's benefit, the UK trust laws imply that the fiduciary is liable for the breach of trust. It has been settled since 1925 that in cases where the court finds the breach of trust unintentional, the trustee's accusations could be lifted. Meanwhile, the claims of fraudulent deception and restitution, as demonstrated in *Murad v Al-Saraj*, should be considered as a trustee's liability punishable by law.

Since the ratification of the Trusts Acts of 1987, the systems of equity courts and common English law merged into a unified system addressing the individuals' concerns for trust liability. Thus, instead of imposing any liability on a trustee, the forthcoming Trustee Act of 2005 outlined the duties of fiduciaries they need to adhere to in order to eliminate the risk of breach. Their duties included the duty of loyalty, prudence, and the duties of subsidiaries. Thus, for example, in *Target Holdings Ltd v Redfern*, the trustee was accused of the breach of trust for not acting in the sole interests of the beneficiary and spending trusted capital without informing the capital owner. Similarly, the duties of trustees imply that the fiduciary bears the responsibility to disclose any information that might be crucial to a beneficiary. In the case of *Murad v Al-Saraj*, the trustee's failure to interpret the contribution correctly led to the reimbursement of the unauthorised gains and liability with the intent to fraud.

Once the breach of trust takes place, the trustee is eligible for equitable compensation of loss. For example, in *AIB Group (UK) plc v Mark Redler & Co Solicitors*, Mark Redler, as a trustee, was awarded nearly £275,000 of equitable compensation to the beneficiary for withholding the calculation mistake that led to substantial financial losses. In order to identify the extent to which the breach of trust is related to explicitly fraudulent activity, the court conducts the test for causation, also known as a "but-for" test. This procedure aims to discover if the trustee's negligence directly leads to the damage or if the breach's implications can exist regardless of the trustees' actions.

For example, in *Swindle v Harrison*, the beneficiary's failure to disclose complete information was irrelevant because the trustee would have made the purchase and lost property regardless of the access to the sensitive information. As far as *Murad v Al-Saraj* is concerned, a venture trustee affected by fraudulent misrepresentation and illegal enrichment should also be eligible for equitable compensation for the venture investment.

Moreover, when agreements between trustees and beneficiaries take place, the parties are legally entitled to apply exemption clauses to the contract. In such a way, both the beneficiaries and trustees have responsibilities and limitations. As a result of the *Armitage v Nurse* proceeding, the Court of Appeal stated that a trust contract should be an equal settlement for both parties in order to identify and address breaches properly. Moreover, the contract should also have equal responsibilities for the trustees engaged in a joint venture, as implied in the *Murad v Al-Saraj* court decision.

Hence, considering the legal precedents above, it can be concluded that every trustee shall be liable for breaching the trust. However, the liability should be treated as such once the fraudulent intent is identified and the initial trust contract puts both the beneficiary and fiduciary in an equal position of responsibility and interaction. Otherwise, transferring the legal responsibility solely to the trustee breaches the principles of equity.