

**41W. Trustee is not exempted from liability for breach of trust**

- (1) ...
- (2) ...
- (3) The terms of a trust must not—
  - (a) relieve, release or exonerate a trustee from ~~liability for a breach of trust arising from the trustee's own fraud, wilful misconduct or gross negligence; or—~~
    - (i) ***liability for a breach of trust arising from the trustee's failure to act honestly; or***
    - (ii) ***liability for a breach of trust arising from an intentional or reckless failure to exercise the degree of care and diligence that is to be reasonably expected of a trustee; or***
  - (b) grant the trustee any indemnity against the trust property for the liability.
- (4) A term of a trust is invalid to the extent to which it purports to—
  - (a) relieve, release or exonerate a trustee from ~~liability for a breach of trust arising from the trustee's own fraud, wilful misconduct or gross negligence; or—~~
    - (i) ***liability for a breach of trust arising from the trustee's failure to act honestly; or***
    - (ii) ***liability for a breach of trust arising from an intentional or reckless failure to exercise the degree of care and diligence that is to be reasonably expected of a trustee; or***
  - (b) grant the trustee any indemnity against the trust property for the liability.