To	Participant
From	View University
Subject	Overview – Intermediate Estate Planning Course

Set out below is a summary of the 3 key topics addressed in this course.

1 Private trust assets

1.1 Trust assets are another category of asset class that are not regulated by a person's will, however must always be considered as part of an estate planning exercise.

1.2 In the vast majority of circumstances, there will be a trust deed that should be reviewed as part of an estate plan to determine how the control of the trust, and in turn, its assets are dealt with on the death of key family members.

1.3 Normally, the key roles to consider in this regard include the trusteeship, the exact range of potential beneficiaries, and any appointor or principal power.

1.4 The issues around trusteeship can be complicated with the use of a corporate trustee, in which case, it is necessary to consider both the way in which the shares in the company are dealt with under an estate plan and how the succession of directorship operates.

1.5 It is also important to remember that if there is an appointor or principal power, that role may give one or more people the ability to unilaterally change the trustee. This can be very important, because while generally a trustee has full control of the trust and its assets, if the trustee's role can be terminated by a principal, then the true ultimate power will actually reside with that principal.

1.6 It is also very important to consider the impact of any loan accounts between a trust and various beneficiaries as they are taken into account, the intended objectives of an estate plan can be significantly undermined.

2 Company owned assets

2.1 While the assets of a company will not be regulated under a person's will, to the extent the shares in the relevant company are owned as a personal individual asset, those shares will be distributed under the will.

2.2 While in theory, the ability to transfer shares via a will does provide a simple pathway for achieving estate planning objectives, it is important to remember that there can be a number of potential complications.

2.3 Some of these complications include:

(a) If the company is in fact acting as trustee of a trust, then it may be that the shares in the trustee company are essentially worthless from a legal perspective, and it is instead more important to focus on the control of the trust.

(b) In many instances, there will be loan accounts with a company that owns assets and related beneficiaries. If these loan accounts are not carefully considered as part of the estate plan, there can be adverse consequences for beneficiaries, and indeed, adverse taxation outcomes.

(c) Particularly in relation to assets that might generate a capital gain over time, ownership via a company is often the least appropriate structure from a tax perspective.

(d) As part of a comprehensive estate planning exercise, it may therefore be appropriate to proactively look for opportunities to restructure the company ownership, either pre-death or as part of the estate plan on a person dying.

3 Partnership assets

3.1 While partnership assets will be regulated by a person's will if they are owned personally, the exact rules in this regard are often complicated by both legislation and written agreements between partners.

3.2 For example, in each Australian state, there is a specific piece of legislation for partnerships that will generally automatically terminate a partnership of individuals on death.

3.3 While this rule under the partnership acts can be changed by written agreement, any written agreement will itself generally have specific provisions that are to apply on a partner's death.

3.4 There can also be complications depending on the type of assets owned by a partnership that mean that even though the partners might be registered as owners of assets, using a joint tenancy ownership structure, the assets could in fact be deemed for estate planning purposes to be owned as tenants in common.

3.5 A further complication to be aware of is where some or all of the members of a partnership are not individuals.

3.6 This will often be the case in relation to property development and professional service providers where a partnership of trusts will be the structure selected.

3.7 In these circumstances, not only is it important to consider the specific rules that relate to partnerships, it is also critical to understand the estate planning rules for the underlying structure of each partner.