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## Estates and trusts

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### estates and trusts: an overview

During the early 1500's in England landowners found it advantageous to convey the legal title of their land to third parties while retaining the benefits of ownership. Because they were not the real "owners" of the land, and wealth was primarily measured by the amount of land owned, they were immune from creditors and may have absolved themselves of some feudal obligations. While feudal concerns no longer exist and wealth is held in many forms other than land (i.e., stocks, bonds, bank accounts), the idea of placing property in third party hands for the benefit of another has survived and prospered. This is the idea of a trust.

Generally, a trust is a right in property (real or personal) which is held in a fiduciary relationship by one party for the benefit of another. The trustee is the one who holds title to the trust property, and the beneficiary is the person who receives the benefits of the trust. To understand the laws governing trusts a good starting point is the *Restatement (2nd) of Trusts*.

Many trusts are created as an alternative to or in conjunction with a will and other elements of estate planning. State law establishes the framework for determining the validity and limits for both.

The Uniform Probate Code has shaped state law in this field. It includes provisions dealing with affairs and estates of the deceased and laws dealing with specified nontestamentary transfers, like trusts and their administration. The theory behind the Code is that wills and trusts are in close relationship and thus in need of unification. Since its creation, over thirty percent of states have adopted the Code substantially in whole.

Since many individuals neither set up trusts nor execute wills, state intestate succession laws are an important complement to trust and estate law. They determine where an individual's assets go upon death in the absence of a will.



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Trust

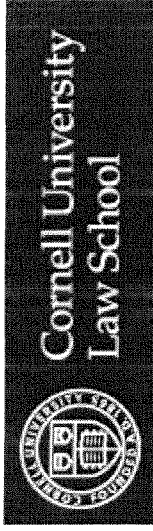
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A right, enforceable in equity, to the beneficial enjoyment of property held by another party who actually holds legal title. The property so held may itself be called a "trust," especially if it consists entirely of invested money (i.e., a trust fund).

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# Trust Property

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Trust property is also known as the "trust res" or "corpus." It is the property that is the subject of the trust. Trust property is a requirement of an express trust. It must be presently existing and identified. Trust property can be any property interest that the law recognizes as a valid property interest that can be transferred. It is a requirement of an express trust along with trust intent, a trustee and definite beneficiaries.

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# Trust Intent

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Trust intent is the settlor's intent to make a trust. It is a requirement of an express trust along with trust property, a trustee and definite beneficiaries.

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# Trustee

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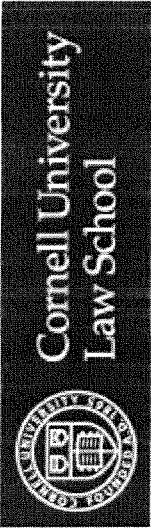
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The trustee is the party who holds legal title to the trust property. The trustee may also be the beneficiary, but he may not be the sole beneficiary because then there would be no separation between legal and equitable ownership, which is required for a valid trust. A trustee is a requirement of an express trust along with trust property, trust intent, and definite beneficiaries.



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# Trust Beneficiary

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The trust beneficiary is the party for whose benefit the trustee holds the title to the trust property.

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# Charitable Trust

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A charitable trust is a trust made for the benefit of specific charitable purposes. The purpose of the trust must fall into one of the specific purpose categories or is it not valid. Charitable trusts are favored by the law. They do not have to have definite beneficiaries because the party who enforces the trust is the attorney general. Also, charitable trusts are not subject to the rule against perpetuities.

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# Discretionary trust

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A discretionary trust is a trust that contains a provision giving the trustee discretion to pay to the beneficiary only so much of the income and principal of the trust assets as the trustee sees fit. Since the beneficiary's interest is subject to the trustee's complete discretion, theoretically the beneficiary only has an expectancy and no actual property interest. Hence, there are no assets to transfer voluntarily and nothing on which creditors can attach.

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# Precatory Trust

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A precatory trust is an express trust that is created with language that expresses a future intent or a wish, but in which the court nevertheless finds legally enforceable duties. Normally trust language must express a present intent to create legally enforceable duties on the trustee in order to have trust intent. If there is no trust intent, the trust fails. Sometimes the court will nonetheless find intent to create legally enforceable duties in a trust that uses precatory language by looking at fiduciary and familial relationships. If there is a familial or fiduciary relationship between the parties, the court will often use that context to presume that intent to create enforceable duties exists. Thus, the trust will not fail for lack of trust intent.

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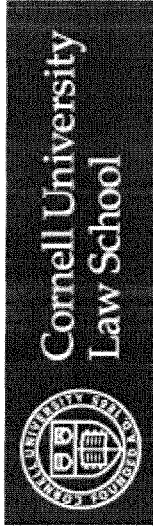
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### equity: an overview

In law, the term equity refers to a particular set of remedies and associated procedures. These equitable doctrines and procedures are distinguished from "legal" ones. Equitable relief is generally available only when a legal remedy is insufficient or inadequate in some way. This could be when a claim involves a particular piece of real estate, or if specific performance is the relief requested by the plaintiff.

The distinction arose in England where there were separate courts of law and of equity. Following this pattern in America some states created "chancery courts" dealing with equitable relief only. In other states, the courts of [common law](#) were empowered to exercise equity [jurisdiction](#). Separate courts of chancery have largely been abolished and the same court that may fashion a legal remedy has the power to prescribe an equitable one.



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### Common law

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Law that is derived from judicial decisions instead of from statutes. Early American common law was taken from English common law. See, e.g. Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996).

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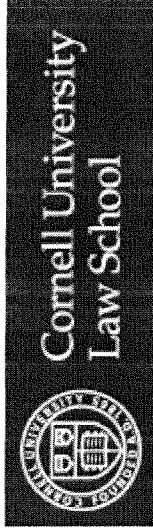
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### Statute

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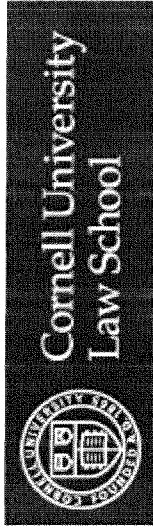
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A law enacted by a legislative body - such as the United States Congress, or a state senate. Statutes are the primary source of law in the United States, and typically authorize an administrative agency (such as the Federal Communications Commission, or the Securities Exchange Commission) to adopt rules pursuant to the Statute. Rules are more specific laws that arise from the Statute.

See also:

- Legislation
- Statutory Construction

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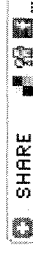
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## Jurisdiction


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### definition

1. Power of a court to adjudicate [cases](#) and issue orders.
2. Territory within which a court or government agency may properly exercise its power. See, e.g. [Ruhrgas AG v. Marathon Oil Co. et al.](#), 526 U.S. 574 (1999).

### jurisdiction: an overview

One of the most fundamental questions of law is whether a given court has jurisdiction to preside over a given case. A jurisdictional question may be broken down into three components:

1. whether there is jurisdiction over the person (*in personam*),
2. whether there is jurisdiction over the subject matter, or res (*in rem*), and
3. whether there is jurisdiction to render the particular judgment sought.

The term jurisdiction is really synonymous with the word "power". Any court possesses jurisdiction over matters only to the extent granted to it by the Constitution, or legislation of the sovereignty on behalf of which it functions. The question of whether a given court has the power to determine a jurisdictional question is itself a jurisdictional question. Such a legal question is referred to as "jurisdiction to determine jurisdiction."

*Subject matter jurisdiction* is the court's authority to decide the issue in controversy such as a contracts issue, or a civil rights issue. State courts have *general jurisdiction*, meaning that they can hear any controversy except those prohibited by state law (some states, for example, deny subject matter jurisdiction for a case that does not involve state citizens and did not take place in the state) and those allocated to federal courts of *exclusive jurisdiction* such as bankruptcy issues (see [28 U.S.C. § 1334](#)). Federal courts have limited jurisdiction in that they can only hear cases that fall both within the scope

defined by the Constitution in [Article III Section 2](#) and Congressional statutes (See 28 U.S.C. [§1251](#), [§1253](#), [§1331](#), [§1332](#)).

*Territorial jurisdiction* is the court's power to bind the parties to the action. This law determines the scope of federal and state court power. State court territorial jurisdiction is determined by the Due Process Clause of the Constitution's [Fourteenth Amendment](#) and the federal court territorial jurisdiction is determined by the Due Process Clause of the Constitution's [Fifth Amendment](#).

Other forms of jurisdiction include *appellate jurisdiction* (the power of one court to correct the errors of another, lower court), [concurrent jurisdiction](#) (the notion that two courts might share the power to hear cases of the same type, arising in the same place), and *diversity jurisdiction* (the power of Federal courts to hear cases in which the parties are from different states). An example showing the interplay of diversity jurisdiction with subject-matter jurisdiction is [Grupo Dataflux v. Atlas Global Group, L. P. \(02-1689\)](#), 541 U.S. 567 (2004)

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6. Confidence (in their amorous destinies) like that of birds in their wings —William Faulkner
7. Confidence, like the soul, never returns, once it is gone —Publius Syrus
8. Doubt ... secret and gnawing like a worm —Joseph Conrad
9. Doubts seemed to steam like wet flies inside his own head —Julia O'Faolain
10. Head ... aw whirl with doubts like a sky full of starlings —George Garrett
11. He was like a suspicion-caked old prospector —Ellery Queen
12. It [the thought that something was not right] was on the edge of her mind like a speck at the corner of your eye or fluff in your nostril —Julia O'Faolain
13. Lean on ... like a man on crutches —Ross Macdonald
14. Mistrust swells like a prune —Marge Piercy
15. No more to be trusted (with news) than a cat with a saucer of milk —Christopher Isherwood
16. Suspicion amongst thoughts are like bats amongst birds, they ever fly by twilight —Francis Bacon
17. Suspicion developed like a muscle —F. Scott Fitzgerald
18. Suspicious ... as a rat near strange bread —Patrick Kavanagh
19. Suspicious as a wild cat —Frank Swinnerton
20. Trust as I'd trust a rattlesnake —Anon
21. A trust, fierce and passionate, burning in her like a prayer —F. Scott Fitzgerald
22. Trust flourishes like a potato plant, mostly underground —Marge Piercy
23. As trusting to the future as a blind sky-diver —Richard Ford
24. Trust is like an egg and it's not like an egg. If you want to break an egg you have to do it from the outside. The only way to break up a trust is from the inside —O. Henry
25. Trustworthy as advice given by a cat to a mouse —Anon

A simile with clear links to an Arabic proverb: "He gives advice such as a cat gives to a mouse."

26. Wearing doubt like a raincoat —Carlos Baker

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## Thesaurus

Legend: ■ Synonyms ■ Related Words ■ Antonyms

**Noun 1. trust** - something (as property) held by one party (the trustee) for the benefit of another (the beneficiary); "he is the beneficiary of a generous trust set up by his father"

■ belongings, property, holding - something owned; any tangible or intangible possession that is owned by someone; "that hat is my property"; "he is a man of property";

■ active trust - a trust in which the trustee must perform certain duties

■ blind trust - a trust that enables a person to avoid possible conflict of interest by transferring assets to a fiduciary; the person establishing the trust gives up the right to information about the assets

■ passive trust - a trust in which the trustee performs no active duties

■ charitable trust, public trust - a trust created for charitable or religious or educational or scientific purposes

■ Clifford trust, grantor trust - a trust established to shift the income to someone who is taxed at a lower rate than the grantor for a period of 10 years or more

■ implied trust - a trust inferred by operation of law

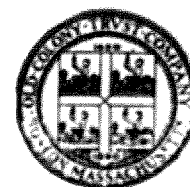
■ direct trust, express trust - a trust created by the free and deliberate act of the parties involved (usually on the basis of written documentation)

■ discretionary trust - a trust that gives the trustee discretion to pay the beneficiary as much of the trust income as the trustee believes appropriate

■ inter vivos trust, living trust - a trust created and operating during the grantor's lifetime

■ spendthrift trust - a trust created to maintain a beneficiary but to be secure against the beneficiary's improvidence

■ testamentary trust - a trust that is created under a will and that becomes active after the grantor



dies

savings account trust, savings bank trust, Totten trust, trust account, trustee account - a savings account deposited by someone who makes themselves the trustee for a beneficiary and who controls it during their lifetime; afterward the balance is payable to the previously named beneficiary

voting trust - an agreement whereby persons owning stock with voting powers retain ownership while transferring the voting rights to the trustees

2. **trust** - certainty based on past experience; "he wrote the paper with considerable reliance on the work of other scientists"; "he put more trust in his own two legs than in the gun"

reliance

certainty - the state of being certain; "his certainty reassured the others"

3. **trust** - the trait of believing in the honesty and reliability of others; "the experience destroyed his trust and personal dignity"

trustfulness, trustingness

trait - a distinguishing feature of your personal nature

credulity - tendency to believe readily

distrustfulness, mistrust, distrust - the trait of not trusting others



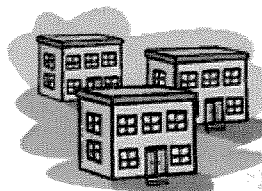
4. **trust** - a consortium of independent organizations formed to limit competition by controlling the production and distribution of a product or service; "they set up the trust in the hope of gaining a monopoly"

cartel, corporate trust, combine

consortium, syndicate, pool - an association of companies for some definite purpose

drug cartel - an illicit cartel formed to control the production and distribution of narcotic drugs; "drug cartels sometimes finance terrorist organizations"

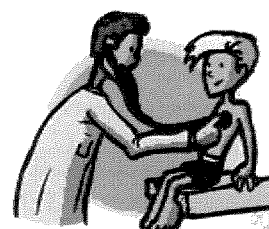
oil cartel - a cartel of companies or nations formed to control the production and distribution of oil



5. **trust** - complete confidence in a person or plan etc; "he cherished the faith of a good woman"; "the doctor-patient relationship is based on trust"

faith

belief - any cognitive content held as true



6. **trust** - a trustful relationship; "he took me into his confidence"; "he betrayed their trust"

confidence

friendly relationship, friendship - the state of being friends (or friendly)



#### Verb 1.

**trust** - have confidence or faith in; "We can trust in God"; "Rely on your friends"; "bank on your good education"; "I swear by my grandmother's recipes"

rely, swear, bank

believe - accept as true; take to be true; "I believed his report"; "We didn't believe his stories from the War"; "She believes in spirits"

credit - have trust in; trust in the truth or veracity of

lean - rely on for support; "We can lean on this man"

depend, bet, reckon, calculate, count, look - have faith or confidence in; "you can count on me to help you any time"; "Look to your friends for support"; "You can bet on that!"; "Depend on your





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### Thesaurus

Legend: ■ Synonyms ■ Related Words ■ Antonyms

**Noun 1. express trust** - a trust created by the free and deliberate act of the parties involved (usually on the basis of written documentation)

■ direct trust

■ trust - something (as property) held by one party (the trustee) for the benefit of another (the beneficiary); "he is the beneficiary of a generous trust set up by his father"

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*A relationship created at the direction of an individual, in which one or more persons hold the individual's property subject to certain duties to use and protect it for the benefit of others.*

Individuals may control the distribution of their property during their lives or after their deaths through the use of a trust. There are many types of trusts and many purposes for their creation. A trust may be created for the financial benefit of the person creating the trust, a surviving spouse or minor children, or a charitable purpose. Though a variety of trusts are permitted by law, trust arrangements that are attempts to evade creditors or lawful responsibilities will be declared void by the courts.

The law of trusts is voluminous and often complicated, but generally it is concerned with whether a trust has been created, whether it is a public or private trust, whether it is legal, and whether the trustee has lawfully managed the trust and trust property.

### Basic Concepts

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The person who creates the trust is the settlor. The person who holds the property for another's benefit is the trustee. The person who is benefited by the trust is the beneficiary, or *cestui que trust*. The property that comprises the trust is the trust res, corpus, principal, or subject matter. For example, a parent signs over certain stock to a bank to manage for a child, with instructions to give the dividend checks to him each year until he becomes 21 years of age, at which time he is to receive all the stock. The parent is the settlor, the bank is the trustee, the stock is the trust res, and the child is the beneficiary.

A fiduciary relationship exists in the law of trusts whenever the settlor relies on the trustee and places special confidence in her. The trustee must act in Good Faith with strict honesty and due regard to protect and serve the interests of the beneficiaries. The trustee also has a fiduciary relationship with the beneficiaries of the trust.

A trustee takes legal title to the trust res, which means that the trustee's interest in the property appears to be one of complete ownership and possession, but the trustee does not have the right to receive any benefits from the property. The right to benefit from the property, known as equitable title, belongs to the beneficiary.

The terms of the trust are the duties and powers of the trustee and the rights of the beneficiary conferred by the settlor when he created the trust.

State statutes and court decisions govern the law of trusts. The validity of a trust of real property is determined by the law of the state where the property is located. The law of the state of the permanent residence (domicile) of the settlor frequently governs a trust of Personal Property, but courts also consider a number of factors—such as the intention of the settlor, the state where the settlor lives, the state where the trustee lives, and the location of the trust property—when deciding which state has the greatest interest in regulating the trust property.

As a general rule, personal property can be held in a trust created orally. Express trusts of real property, however, must be in writing to be enforced. When a person creates a trust in his will, the resulting testamentary trust will be valid only if the will itself conforms to the requirements of state law for wills. Some states have adopted all or part of the Uniform Probate Code, which governs both wills and testamentary trusts.

### Private Trusts

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An express trust is created when the settlor expresses an intention either orally or in writing to establish the trust and complies with the required formalities. An express trust is what people usually mean when they refer to a trust.

Every private trust consists of four distinct elements: an intention of the settlor to create the trust, a res or subject matter, a trustee, and a beneficiary. Unless these elements are present, a court cannot enforce an arrangement as a trust.

**Intention** The settlor must intend to impose enforceable duties on a trustee to deal with the property for the benefit of another. Intent can be demonstrated by words, conduct, or both. It is immaterial whether the word *trust* is used in the trust document. Sometimes, however, the words used by the settlor are equivocal and there is doubt whether the settlor intended to create a trust. If the settlor uses words that express merely the desire to do something, such as the terms *desire*, *wish*, or *hope*, these precatory words (words expressing a wish) may create a moral obligation, but they do not create a legal one. In this situation a court will consider the entire document and the circumstances of the person who attempted to create the trust to determine whether a trust should be established.

The settlor must intend to create a present trust. Demonstrating an intent to create a trust in the future is legally ineffective. When a settlor does not immediately designate the beneficiary, the trustee, or the trust property, a trust is not created until the designations are made.

**Res or Subject Matter** An essential element of every trust is the trust property or res. Property must exist and be definite or definitely ascertainable at the time the trust is created and throughout its existence. Although stocks, bonds, and deeds are the most common types of trust property, any property interest that can be freely transferred by the settlor can be held in trust, including Patents, copyrights, and Trademarks. A mere expectancy—the anticipation of receiving a gift by will, for example—cannot be held in trust for another because no property interest exists at that time.

If the subject matter of a trust is totally destroyed, the trust ends. The beneficiary might have a claim against the trustee for breach of trust, however, if the trustee was negligent in failing to insure the trust property. If insurance proceeds are paid as a result of the destruction, the trust should be administered from them.

**Trustee** Any person who has the legal capacity to take, hold, and administer property for her own use can take, hold, and administer property in trust. Nonresidents of the state in which the trust is to be administered can be trustees. State law determines whether an alien can act as a trustee.

A corporation can act as a trustee. For example, a trust company is a bank that has been named by a settlor to act as trustee in managing a trust. A partnership can serve as a trustee if state law permits. An unincorporated association, such as a Labor Union or social club, usually cannot serve as a trustee.

The United States, a state, or a Municipal Corporation can take and hold property as trustee. This arrangement usually occurs when a settlor creates a trust for the benefit of a military academy or a state college, or when the settlor sets aside property as a park for the community.

The failure of a settlor to name a trustee does not void a trust. The court appoints a trustee to administer the trust and orders the person having legal title to the property to convey it to the appointed trustee.

If two or more trustees are appointed, they always hold the title to trust property in Joint Tenancy with the Right of Survivorship. If one joint tenant dies, the surviving joint tenant inherits the entire interest, not just her proportionate share.

A trustee cannot resign without the permission of the court unless the trust instrument so provides or unless all of the beneficiaries who are legally capable to do so consent to the resignation. The court usually permits the trustee to resign if continuing to serve will be an unreasonable burden for the trustee and the resignation will not be greatly detrimental to the trust.

The removal of a trustee is within the discretion of the court. A trustee can be removed for habitual drunkenness, dishonesty, incompetency in handling trust property, or the dissipation of the trustee estate. Mere friction or incompatibility between the trustee and the beneficiary is insufficient, however, to justify removal unless it endangers the trust property or makes the accomplishment of the trust impossible.

**Beneficiary** Every private trust must have a designated beneficiary or one so described that his identity can be

learned when the trust is created or within the time limit of the Rule against Perpetuities, which is usually measured by the life of a person alive or conceived at the time the trust is created plus 21 years. This Rule of Law, which varies from state to state, is designed to prevent a person from tying up property in a trust for an unlimited number of years.

A person or corporation legally capable of taking and holding legal title to property can be a beneficiary of a trust. Partnerships and unincorporated associations can also be beneficiaries. Unless restricted by law, Aliens can also be beneficiaries.

A class of persons can be named the beneficiary of a trust as long as the class is definite or definitely ascertainable. If property is left in trust for "my children," the class is definite and the trust is valid. When a trust is designated "for my family," the validity of the trust depends on whether the court construes the term to mean immediate family—in which case the class is definite—or all relations. If the latter is meant, the trust will fail because the class is indefinite.

When an ascertainable class exists, a settlor may grant the trustee the right to select beneficiaries from that class. However, a trust created for the benefit of any person selected by the trustee is not enforceable.

If the settlor's designation of an individual beneficiary or a class of beneficiaries is so vague or indefinite that the individual or group cannot be determined with reasonable clarity, the trust will fail.

The beneficiaries of a trust hold their equitable interest as tenants in common unless the trust instrument provides that they shall hold as joint tenants. For example, three beneficiaries each own an undivided one-third of the equitable title in the trust property. If they take as tenants in common, upon their deaths their heirs will inherit their proportionate shares. If, however, the settlor specified in the trust document that they are to take as joint tenants, then upon the death of one, the two beneficiaries will divide his share. Upon the death of one of the remaining two, the lone survivor will enjoy the complete benefits of the trust.

## Creation of Express Trusts

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To create an express trust, the settlor must own or have Power of Attorney over the property that is to become the trust property or must have the power to create such property. The settlor must be legally competent to create a trust.

A trust cannot be created for an illegal purpose, such as to defraud creditors or to deprive a spouse of her rightful elective share. The purpose of a trust is considered illegal when it is aimed at accomplishing objectives contrary to public policy. For example, a trust provision that encourages Divorce, prevents a marriage, or violates the rule against perpetuities generally will not be enforced.

If the illegal provision pertains to the whole trust, the trust fails in its entirety. If, however, it does not affect the entire trust, only the illegal provision is stricken, and the trust is given effect without it.

## Methods of Creation

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A trust may be created by an express declaration of trust, a transfer in trust made either during a settlor's lifetime or under her will, an exercise of the power of appointment, a contractual arrangement, or statute. The method used for creating the trust depends on the relationship of the settlor to the property interest that is to constitute the trust property.

**Declaration of Trust** A trust is created by a declaration of trust when the owner of property announces that she holds it as a trustee for the benefit of another. There is no need for a transfer because the trustee already has legal title. An oral declaration is usually sufficient to transfer equitable title to personal property, but a written declaration is usually required with respect to real property.

**Trust Transfers** A trust is created when property is transferred in trust to a trustee for the benefit of another or even for the benefit of the settlor. Legal title passes to the trustee, and the beneficiary receives equitable title in the property. The settlor has no remaining interest in the property. A transfer in trust can be executed by a deed

or some other arrangement during the settlor's lifetime. This is known as an inter vivos trust or living trust.

**Powers of Appointment** A power of appointment is the right that one person, called the donor, gives in a deed or a will to another, the donee, to "appoint" or select individuals, the appointees, who should benefit from the donor's will, deed, or trust. A person holding a general power of appointment can create a trust according to the donor's direction by appointing a person as trustee to hold the trust property for anyone, including herself or her estate. If that person holds a special power of appointment, she cannot appoint herself.

**Contracts** Trusts can be created by various types of contractual arrangements. For example, a person can take out a life insurance policy on his own life and pay the premiums on the policy.

The insurer, in return, promises to pay the proceeds of the policy to an individual who is to act as a trustee for an individual named by the insured. The trustee is given the duty to support the beneficiary of this trust from the proceeds during the beneficiary's life. The insured as settlor creates a trust by entering into a contract with the insurance company in favor of a trustee. The trust, called an insurance trust, is created when the insurance company issues its policy.

**Statute** Statutes provide for the creation of trusts in various instances. In the case of Wrongful Death, statutes often provide that a right of action exists in the surviving spouse or executor or administrator of the decedent with any recovery held in trust for the designated beneficiaries.

## **Protection of Beneficiary's Interest from Creditors**

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Various trust devices have been developed to protect a beneficiary's interest from creditors. The most common are spendthrift trusts, discretionary trusts, and support trusts. Such devices safeguard the trust property while the trustee retains it. Once funds have been paid to the beneficiary, however, any attempt at imposing restraint on the transferability of his interest is invalid.

**Spendthrift Trusts** A Spendthrift Trust is one in which, because of either a direction of the settlor or statute, the beneficiary is unable to transfer his right to future payments of income or capital, and creditors are unable to obtain the beneficiary's interest in future distributions from the trust for the payment of debts. Such trusts are ordinarily created with the aim of providing a fund for the maintenance of another, known as the spendthrift, while at the same time protecting the trust against the beneficiary's shortsightedness, extravagance, and inability to manage his financial affairs. Such trusts do not restrict creditors' rights to the property after the beneficiary receives it, but the creditors cannot compel the trustee to pay them directly.

The majority of states authorize spendthrift trusts. Those that do not will void such provisions so that the beneficiary can transfer his rights and creditors can reach the right to future income.

**Discretionary Trusts** A discretionary trust authorizes the trustee to pay to the beneficiary only as much of the income or capital of the trust as the trustee sees fit to use for that purpose, with the remaining income or capital reserved for another purpose. This discretion allows the trustee to give the beneficiary some benefits under the trust or to give her nothing. The beneficiary cannot force the trustee to use any of the trust property for the beneficiary's benefit. Such a trust gives the beneficiary no interest that can be transferred or reached by creditors until the trustee has decided to pay or apply some of the trust property for the beneficiary.

**Support Trusts** A trust that directs that the trustee shall pay or apply only so much of the income and principal as is necessary for the education and support of a beneficiary is a support trust. The interest of the beneficiary cannot be transferred. Paying money to an assignee of the beneficiary or to creditors would defeat the objectives of the trust. Support trusts are used, for the most part, in jurisdictions that prohibit spendthrift trusts.

## **Charitable Trusts**

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The purpose of a Charitable Trust is to accomplish a substantial social benefit for some portion of the public. The law favors charitable trusts by according them certain privileges, such as an advantageous tax status. Before a court will enforce a charitable trust, however, it must examine the alleged charity and evaluate its social benefits. The court cannot rely on the settlor's view that the trust is charitable.

To be valid, a charitable trust must meet certain requirements. The settlor must have the intent to create a charitable trust, there must be a trustee to administer the trust, which consists of some trust property, and the charitable purpose must be expressly designated. The beneficiary must be a definite segment of the community composed of indefinite persons. Selected persons within the class must actually receive the benefit. The requirements of intention, trustee, and res in a charitable trust are the same as those in a private trust.

**Charitable Purpose** A charitable purpose is one that benefits, improves, or uplifts humankind mentally, morally, or physically. The relief of poverty, the improvement of government, and the advancement of religion, education, or health are some examples of charitable purposes.

**Beneficiaries** The class to be benefited in a charitable trust must be a definite segment of the public. It must be large enough so that the community in general is affected and has an interest in the enforcement of the trust, yet it must not include the entire human race. Within the class, however, the specific persons to benefit must be indefinite. A trust "for the benefit of orphans of veterans of the 1991 Gulf War" is charitable because the class or category of beneficiaries is definite. The indefinite persons within the class are the individuals ultimately selected by the trustee to receive the provided benefit.

A trust for designated persons or a trust for profit cannot be a charitable trust. A trust to "erect and maintain a hospital" might be charitable even though the hospital charges the patients who are served, provided that any profits are used solely to continue the charitable services of the hospital.

As a general rule, a charitable trust may last forever, unlike a private trust. In a private trust, the designated beneficiary is the proper person to enforce the trust. In a charitable trust, the state attorney general, who represents the public interest, is the proper person to enforce the trust.

**Cy Pres Doctrine** The doctrine of Cy Pres, taken from the phrase *cy pres comme possible* (French for "as near as possible"), refers to the power of a court to change administrative provisions in a charitable trust when the settlor's directions hinder the trustee in accomplishing the trust purpose. A court also has the power under the cy pres doctrine to order the trust funds to be applied to a charitable purpose other than the one named by the settlor. This will occur if it has become impossible, impractical, or inexpedient to accomplish the settlor's charitable purpose. Because a charitable trust can last forever, many purposes become obsolete because of changing economic, social, political, or other conditions. For example, a trust created in 1930 to combat smallpox would be of little practical value today because medical advances have virtually eliminated the disease. When the cy pres doctrine is applied, the court reasons that the settlor would have wanted her general charitable purposes implemented despite the changing conditions.

The cy pres doctrine can be applied only by a court, never by the trustees of the trust, who must execute the terms of the trust. Trustees can apply to the court, however, for cy pres instructions when they believe that the trust arrangements warrant it.

## Management

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The terms of a trust instrument, when a writing is required, or the statements of a settlor, when she creates a trust, set specific powers or duties that the trustee has in administering the trust property. These express powers, which are unequivocal and directly granted to the trustee, frequently consist of the power to sell the original trust property, invest the proceeds of any property sold, and collect the income of the trust property and pay it to the beneficiaries. The trustee also has implied powers that the settlor is deemed to have intended because they are necessary to fulfill the purposes of the trust.

A settlor can order the trustee to perform a certain act during the administration of the trust, such as selling trust realty as soon as possible and investing the proceeds in bonds. This power to sell is a mandatory or an imperative power. If the trustee fails to execute this power, he has committed a breach of trust. The beneficiary can obtain a court order compelling the trustee to perform the act, or the court can order the trustee to pay damages for delaying or failing to use the power. The court can also remove the trustee and appoint one who will exercise the power.

Courts usually will not set aside the decision of a trustee as long as the trustee made the decision in good faith after considering the settlor's intended purpose of the trust and the circumstances of the beneficiaries. A court

will not tell a trustee how to exercise his discretionary powers. It will only direct the trustee to use his own judgment. If, however, the trustee refuses to do so or does so in bad faith or arbitrarily, a beneficiary can seek court intervention.

A trustee, as a fiduciary, must administer the trust with the skill and prudence that any reasonable and careful person would use in conducting her own financial affairs. The trustee's actions must conform to the trust purposes. Failure to act in this manner will render a trustee liable for breach of trust, regardless of whether she acted in good faith.

A trustee must be loyal to the beneficiaries, administering the trust solely for their benefit and to the exclusion of any considerations of personal profit or advantage. A trustee would violate her fiduciary duty and demonstrate a conflict of interest if, for example, she sold trust property to herself.

A trustee has the duty to defend the trust and the interests of the beneficiaries against baseless claims that the trust is invalid. If the claim is valid, however, and it would be useless to defend against such a challenge, the trustee should accede to the claim to avoid any unnecessary waste of property.

Trust property must be designated as such and segregated from a trustee's individual property and from property the trustee might hold in trust for others. This requirement enables a trustee to properly maintain the property and allows the beneficiary to easily trace it in the event of the trustee's death or insolvency.

Generally, a trustee is directed to collect and distribute income and has the duty to invest the trust property in income-producing assets as soon as is reasonable. This duty of investment is controlled by the settlor's directions in the trust document, court orders, the consent of the beneficiaries, or statute. Some states have statutes that list various types of investments that a trustee may or must make. Such laws are known as legal list statutes.

One of the principal duties of a trustee is to make payments of income and distribute the trust principal according to the terms of the trust, unless otherwise directed by a court. Unless a settlor expressly reserves such power when creating the trust, she cannot modify its payment provisions. In addition, the trustee cannot alter the terms of payment without obtaining approval of all the beneficiaries. Courts are empowered to permit the trustee to deviate from the trust terms with respect to the time and the form of payment, but the relative size of the beneficiaries' interests cannot be changed. If a beneficiary is in dire need of funds, courts will accelerate the payment. This is called "hastening the enjoyment."

## **Revocation or Modification**

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The creation of a trust is actually a conveyance of the settlor's property, usually as a gift. A trust cannot be cancelled or set aside at the option of the settlor should the settlor change his mind or become dissatisfied with the trust, unless the trust instrument so provides. If the settlor reserves the power to revoke or modify only in a particular manner, he can do so only in that manner. Otherwise, the revocation or modification can be accomplished in any manner that sufficiently demonstrates the settlor's intention to revoke or modify.

## **Termination**

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The period of time for which a trust is to operate is usually expressly prescribed in the trust instrument. A settlor can state that the trust shall last until the beneficiary reaches a particular age or until the beneficiary marries. When this period expires, the trust ends.

When the duration of a trust is not expressly fixed, the basic rule is that a trust will last no longer than necessary for the accomplishment of its purpose. A trust to educate a person's grandchildren would terminate when their education is completed. A trust also concludes when its purposes become impossible or illegal.

When all the beneficiaries and the settlor join in applying to the court to have the trust terminated, it will be ended even though the purposes that the settlor originally contemplated have not been accomplished. If the settlor does not join in the action, and if one or more of the purposes of the trust can still be attained by continuing the trust, the majority of U.S. courts refuse to grant a decree of termination. Testamentary trusts

cannot be terminated.

## Further readings

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## Cross-references

Honorary Trust; Resulting Trust; *Vidal v. Girard's Executors*.

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**trust** n. an entity created to hold assets for the benefit of certain persons or entities, with a trustee managing the trust (and often holding title on behalf of the trust). Most trusts are founded by the persons (called trustors, settlors and/or donors) who execute a written Declaration of Trust which establishes the trust and spells out the terms and conditions upon which it will be conducted. The Declaration also names the original trustee or trustees, successor trustees, or means to choose future trustees. The assets of the trust are usually given to the trust by the creators, although assets may be added by others. During the life of the trust, profits and, sometimes, a portion of the principal (called "corpus") may be distributed to the beneficiaries, and at some time in the future (such as the death of the last trustor or settlor) the remaining assets will be distributed to beneficiaries. A trust may take the place of a will and avoid probate (management of an estate with court supervision) by providing for distribution of all assets originally owned by the trustors or settlors, upon their death. There are numerous types of trusts, including revocable trusts created to handle the trustors' assets (with the trustor acting as initial trustee), often called a "living trust" (or "inter vivos trust") which only becomes irrevocable on the death of the first trustor; "irrevocable trust" which cannot be changed at any time, "charitable remainder unitrust" which provides for eventual guaranteed distribution of the corpus (assets) to charity, thus gaining a substantial tax benefit. There are also court-decreed "constructive" and "resulting" trusts over property held by someone for its owner. A "testamentary trust" can be created by a will to manage assets given to beneficiaries. (See: living trust, inter vivos trust, charitable remainder trust, constructive trust, resulting trust, trustee, trustor, settlor, declaration of trust, testamentary trust)

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**trust** (Combination of businesses), *noun* association, cartel, combination of companies, combine, consortium, corporation, merger, monopolistic organization, monopoly, pool, syndicate  
**Associated concepts:** antitrust laws, combination in restraint of trade

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**trust** (Confidence), *noun* assurance, belief, certainty, confident expectation, conviction, credence, credulity, faith, fides, fiducia, reassurance, reliance, trustworthiness  
**Associated concepts:** breach of trust, office of trust, public trust



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**trust** (Custody), *noun* care, charge, control, duty, guardianship, holding, keeping, management, obligation, possession and control, power over, protection, safety

**Associated concepts:** beneficiary of trust, business trust, cestui que trust, charitable trust, constructive trust, continuing trust, corpus of trust, de facto trust, declaration of trust, discretionary trust, dormant trust, dry trust, execution of trust, executory trust, express trust, implied trust, parol trust, presumptive trust, principal of a trust, private trust, residuary trust, resultant trust, revocable trust, shifting trust, special trust, spendthrift trust, totten trust, trust agreement, trust certificate, trust company, trust deed, trust estate, trust funds, trust mortgage, trust receipts

**Foreign phrases:** Fides est obligatio conscientiae alicujus ad intentionem alterius. A trust is an obligation of conscience of one to the wishes of another.

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**trust** *verb* accept, accredit, assume, be confident, confide, count upon, credere, credit, depend upon, expect, feel sure, give credence to, give credit to, have faith in, have no doubt, have no reservations, hope, lean on, mandare, place reliance in, presume, put confidence in, rely on, swear by, take, take for granted

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See also: agency, cartel, charge, commit, commitment, compact, confederacy, confidence, consortium, credence, credulity, custody, entrust, expectation, faith, league, loan, mission, outlook, pool, prospect, protégé, reliance, rely, responsibility, safety, security

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TRUST, contracts, devises. An equitable right, title or interest in property, real or personal, distinct from its legal ownership; or it is a personal obligation for paying, delivering or performing anything, where the person trusting has no real right or security, for by that act he confides altogether to the faithfulness of those entrusted. This is its most general meaning, and includes deposits, bailments, and the like. In its more technical sense, it may be defined to be an obligation upon a person, arising out of a confidence reposed in him, to apply property faithfully, and according to such confidence. Willis on Trustees, 1; 4 Kent, Com. 295; 2 Fonb. Eq. 1; 1 Saund. Uses and Tr. 6; Coop. Eq. Pl. Introd. 27; 3 Bl. Com. 431.

2. Trusts were probably derived from the civil law. The fidei commissum, (q.v.) is not dissimilar to a trust.

3. Trusts are either express or implied. 1st. Express trusts are those which are created in express terms in the deed, writing or will. The terms to create an express trust will be sufficient, if it can be fairly collected upon the face of the instrument that a trust was intended. Express trusts are usually found in preliminary sealed agreements, such as marriage articles, or articles for the purchase of land; in formal conveyances, such as marriage settlements, terms for years, mortgages, assignments for the payment of debts, raising portions or other purposes; and in wills and testaments, when the bequests involve fiduciary interests for private benefit or public charity,, they may be created even by parol. 6 Watts & Serg. 97.

4.-2d. Implied trusts are those which without being expressed, are deducible from the nature of the transaction, as matters of intent; or which are superinduced upon the transaction by operation of law, as matters of equity, independently of the particular intention of the parties.

5. The most common form of an implied trust is where property or money is delivered by one person to another, to be by the latter delivered to a third person. These implied trusts greatly extend over the business and pursuits of men: a few examples will be given.

6. When land is purchased by one man in the name of another, and the former pays the consideration money, the land will in general be held by the grantee in Trust for the person who so paid the consideration money. Com. Dig. Chancery, 3 W 3; 2 Fonb. Eq. book 2, c. 5, Sec. 1, note a. Story, Eq. Jur. Sec. 1201.

7. When real property is purchased out of partnership funds, and the title is taken in the name of one of the partners, he will hold it in trust for all the partners. 7 Ves. jr. 453; Montague on Partn. 97, n.; Colly. Partn. 68.

8. When a contract is made for the sale of land, in equity the vendor is immediately deemed a trustee for the vendee of the estate; and the vendee, a trustee for the vendor of the purchase money; and by this means there is an equitable conversion of the property. 1 Fonb. Eq. book 1, ch. 6, Sec. 9, note t; Story, Eq. Jur. SSSS 789,

790, 1212. See Conversion. For the origin of trusts in the civil law, see 5 Toull. Dr. Civ. Fr. liv. 3, t. 2, c. 1, n. 18; 1 Brown's Civ. Law, 190. Vide Resulting Trusts. See, generally, Bouv. Inst. Index, h.t.

A Law Dictionary, Adapted to the Constitution and Laws of the United States. By John Bouvier. Published 1856.

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