## Trusts: Key Facts

A trust is an **equitable duty** relating to property.

There is **no single definition** of a trust.

A trust allows the **separation of the powers** of the **legal owner** (held by trustees) from the **benefits resulting** from the exercise of those powers (enjoyed by beneficiaries).

A trust can confer **different types of rights** on **different beneficiaries** at **different times**.

## Characteristics of Trusts

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| **Trust property**: | There must be an **identifiable trust property**. |
| | The property is the **subject matter** of the trust. |
| | Almost every **asset or right** can be held on trust. |
| | A **chose in action** is a right (intangible) - e.g. a debt / company share. |
| | A **chattel** is a tangible item (other than land) - e.g. cars, computers, jewellery. |
| | A trust **ceases to exist** if the trust property is **destroyed or consumed** (without fault of the trustee). |
| | Where the **trustee is at fault** for loss of trust property, they will be liable to **restore** the property or pay **compensation** so the trust will **not** cease to exist. |
| **Trustees**: | A trustee **owns** the property and has all the **rights and powers of legal ownership**. |
| | The **functions and duties** of trustees are **not unitary**. |
| | The **function and duty** of any specific trustee is determined by the **nature of the trust** they are administering. |
| | Role of trustee is a **voluntary office** and is typically **unpaid** although professional trustees are entitled to remuneration. |
| | A trustee can be one of the beneficiaries of a trust. |
| **Trustee duties**: | Basic duty of a trustee is to **hold or apply** trust property for the benefit of the beneficiary. |
| | Trustees who are also beneficiaries still **owe duties to the other beneficiaries** so cannot simply use the trust fund for their own benefit. |
| **Objects**: | A trust must have a **beneficiary** or be for a **permitted purpose**. |
| | A purpose trust is a trust for the **promotion or realisation of a purpose** (i.e. a trust without a beneficiary). |
| | Most trusts will have a beneficiary or beneficiaries. |

## Characteristics of Trusts (cont)

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| **Equitable proprietary interest**: | A beneficiary's interest is **good against third parties** into whose hands the property or its traceable proceeds may have come. |
| | Unlike legal proprietary interests, it **cannot be enforced against everyone**. |
| | Equitable proprietary interests **cannot** be enforced against a purchaser of a legal interest who **does not have notice of the trust**. |
| | As an equitable proprietary interest in trust property, the property does **not** form part of the trustee's estate for the purposes of the bankruptcy and insolvency regimes: **cannot** be distributed to trustee's creditors. |
| | Thus, a beneficiary enjoys **'priority' over the unsecured creditors of the trustee** in the event of the latter's bankruptcy or insolvency. |
| | ............**Categorisations**........... |
| **Express**: | A trust which is **deliberately created**. |
| | The person who creates the trust is known as the **'settlor'**. |
| **Resulting** or **Constructive**: | Trusts which arise by **operation of law**. |
| | They are imposed **by the courts**. |
| | **"Implied trusts"**. |

## Comparisons & Distinctions

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| **Trusts vs Contracts**: | It is possible to **contract to create a trust** - this happens regularly. |
| | But, a contract is a creation of **common law** where a trust in the creation of **equity**. |
| | In a trust, • There is **no requirement for an agreement** between any of the parties. |
| **Trusts vs Debts**: | Unlike a trust, a debt does **not** relate to **specific assets or funds**. |
| | A creditor has a **personal** right to payment but a beneficiary has an **equitable proprietary interest** in the trust property. |
| **Trusts vs Charges**: | Both a beneficiary and a chargee have a **proprietary interest** in (respectively) the trust property and the charged property. |
| | But, a chargor **can** use charged property for their **own benefit**. |
| | A characteristic of a charge (but not a trust) is a **right of redemption**. |
| **Trusts vs Agency**: | Both are subject to **fiduciary duties**. |

## Comparisons & Distinctions (cont)

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| | Unlike an agent, a trustee **cannot** commit a beneficiary to a contract with a third party. |
| **Trusts vs Bailment**: | Bailment is the **transfer of possession of chattels** from one person to another. |
| | **Only tangible** property can form the subject matter of a bailment. |
| | Bailment involves transfer of possession but does not impact the bailor's legal title to the property. |
| **Trusts vs Companies**: | A trust does **not** have a legal personality. |
| | A trust **cannot** bring or defend a legal action in its own name. |
| | Company shareholders do **not** have a proprietary interest in the company's assets, but in the company. |
| | Company directors' obligations are **owed to the company**, **not** to the shareholders. |
| **Trusts vs Estate Administration**: | The function of a personal representative is to **administer and distribute** the deceased's estate ASAP. |
| | Express trusts are created to **endure for many years** so trustees have ongoing asset management functions. |
| | A person interested in a deceased person's estate does **not have an equitable proprietary interest** in any of the estate assets. |
| | Beneficiaries of a trust **do have an equitable proprietary interest**. |
| **Trusts vs Gifts**: | A **"gift on trust"** is a gratuitous transfer on trust. |
| | An outright gift =<br>- the absolute **transfer of full legal ownership**<br>- donor is **full legal owner**<br>- donee becomes **full legal owner** upon transfer<br>- **no separate equitable interest** in the property at any stage |
| | With a trust, the settlor creates a new **equitable interest** for the beneficiary. |

## Private Express Trusts: Requirements

...........**Trust Duration**..........

Trusts are **not intended to be permanent** arrangements.

In a **discretionary trust**, trustees are obliged to exercise their discretion **within a reasonable timeframe**, limiting the duration of the trust.

Often a **trust instrument** will contain **rules dealing with how and when the trust is brought to an end** - Trust Period.

Where there is **no mechanism** to limit the trust, the **law limits the duration** by means of rules known as the **perpetuity rules**.

...........**Perpetuity Rules**..........

## Private Express Trusts: Requirements (cont)

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| **1. The rule against remoteness of vesting**: | Statutory rule which requires that a person (or charity) must obtain a vested interest in the trust property within a recognised ‘perpetuity period’. |
| | This period is **125 years**. |
| | It is possible for a **trust instrument** to **limit** the duration of the trust to a **shorter period**. |
| | Trust interests which **do not** vest within the statutory perpetuity period is **void**. |
| **1a.** Wait and see rule: | The trust can exist until it becomes apparent that the interest **cannot** vest within the perpetuity period. |
| | Anything done **before this time** will remain valid. |
| **1b.** Class closing rule: | Objects can be **excluded** from the trust who might otherwise cause the trust to **fail** because their interest would vest **outside the perpetuity clause**. |
| **2. The rule against inalienability**: | Assets **cannot** be tied up on trust for **longer than the common law perpetuity period of a specified life in being plus 21 years** |
| | This rule **no longer applies** to most trusts but is relevant for **non-charitable purpose trusts**. |
| | There is **no** wait and see rule: it **must** be clear from the outset that the trust will end within the **prescribed perpetuity period**. |
| | Hence, the trust instrument for these trusts **must** contain an **express perpetuity period**. If not, the trust will fail. |
| | Express perpetuity clause examples:<br>- 21 years<br>- as long as the law allows<br>- 21 years following the death of the last surviving descendant of Queen Elizabeth II who is alive at the date of my death |

## Trusts Arising by Operation of Law

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| **Resulting trusts**: | An implied trust. |
| | Arise where a **legal owner transfers ownership of their property** to a **third party** but equity recognises that they should **retain/regain the beneficial interest** in that property. |
| | There are **2 sub-categories**: |

| Trusts Arising by Operation of Law (cont) | | |
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| | **1. Automatic resulting trusts**: | Default trusts which arise when a **transfer on trust fails** wholly or partly. |
| | | If a **trustee is holding legal title** but the trust has failed, equity imposes a resulting trust meaning that they **hold the property on trust for the settlor**. |
| | | The settlor gets ***Saunders v Vautier rights***: they can collapse the trust and recover the property. |
| | | Equity's way of ensuring that the **property returns to its original owner** when it is otherwise unclear what should happen to it. |
| | | These trusts do **not** respond to the actual intention of the settlor. |
| | **2. Presumed resulting trusts**: | These trusts **do** respond to the actual intention of the settlor. |
| | | Where a person makes a **gratuitous transfer of property to a third party**, equity raises a **presumption** of a resulting trust. |
| | | If a person transfers their property to someone else, equity will presume that they wanted that other person to hold it on trust for them. |
| | | The presumption of resulting trust **can be rebutted** by evidence. |
| | | A resulting trust will **only arise** if there is **no evidence rebutting the presumption**. |
| **Constructive trusts**: | An implied trust. | |
| | All constructive trusts are imposed to **correct unconscionability**. | |
| | **3 broad situations** where constructive trusts arise: | |
| | **1. Institutional constructive trusts**: | Arise because the **conscience of a legal owner** is affected in some way. |
| | | Imposed **automatically** in response to a **trigger** event. |

| Trusts Arising by Operation of Law (cont) | | |
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| | | E.g. Constructive trusts imposed to:<br>- prevent fraud<br>- perfect an imperfect gift<br>- profits made in breach of fiduciary duty |
| | **2. Constructive trusts as remedy**: | Awarded **by court** as a remedy following **misapplication of property**. |
| | | **Not** imposed automatically. |
| | | The result of C **asserting their rights** in the property and seeking to **claim beneficial ownership**. |
| | **3. Common intention constructive trusts**: | Used to **resolve disputes as to the beneficial ownership of land** where there is **no express trust** declared over the land. |
| | | The court assesses the **common intention of the parties** to determine their respective equitable interests in the land. |
| **Statutory trusts**: | There are some circumstances where a trust arises as a result of a legislative provision. | |
| | E.g. the statutory trusts that arise under the Intestacy Rules when a person dies without leaving a valid will. | |
| | The intention of the legal owners of the property is not relevant. | |

| Beneficiaries: Rights | | |
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| **1. Proprietary rights**: | ***Fixed trusts***: | Beneficiaries have **equitable proprietary rights**. |
| | | Their rights may be **vested** or **contingent** but they are proprietary. |
| | | These rights are assets which are **capable of sale** or other forms of transfer and can be **asserted against third parties**. |
| | | **Power to bring the trust to an end** by exercising the rule in ***Saunders v Vautier***. |
| | ***Discretionary trusts***: | Beneficiaries do **not** have proprietary rights, although some of their rights are akin to proprietary. |
| | | Until the discretion is exercise, beneficiaries can only **hope** that the discretion is exercised in their favour. |

## Beneficiaries: Rights (cont)

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| | | They **cannot** assert their rights against third parties. |
| | | They **do** have sufficient interest in the trust property to **compel its return to the trust fund**. |
| | | **Power to bring the trust to an end** by exercising the rule in ***Saunders v Vautier***. |
| **2. Personal rights**: | ***Fixed trusts***: | The **right to compel the proper administration of the trust** by the trustees: they can direct the trustee to take action such as suing a third party on behalf of the trust. |
| | | Right to be **informed of their entitlement** under the trust once their interest has vested. |
| | | Can **sue the trustees for breach of trust** if they act outside their powers or in breach of their duties. |
| | ***Discretionary trusts***: | Beneficiaries can enforce the trust by **asking the court** to ensure that **discretion is exercised**, but **no right** to request it be exercised in a particular way. |
| | | Once discretion is exercised in favour of a beneficiary, they have the **right to be informed of their entitlement**. |
| | | Can **sue the trustees for breach of trust** if they act outside their powers or in breach of their duties. |

## Beneficial Entitlement: Fixed & Discretionary

...........**Fixed Trust**..........

A trust in which the entitlement of the beneficiaries is fixed by the settlor.

Trustees have no discretion in relation to the distribution of the trust property.

Trustees must distribute as directed by the settlor.

The settlor cannot tell the trustees what to do once the trust has come into effect (unless they have reserved a power to do so).

Can have one or more beneficiaries, and those beneficiaries may have very different entitlements in respect of the trust property.

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| Successive interest trust: | A type of fixed trust. |
| | Involves a series of consecutive interests in the same trust property. |
| | Gives some beneficiaries a right to income (income beneficiaries) while others are entitled to capital (capital beneficiaries). |
| Life interest trust: | A type of successive interest trust. |

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