Trusts Law Cheat Sheet

by livjharrison via cheatography.com/192137/cs/41973/

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

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).

Characteristics of Trusts (cont)

	Most trusts will have a beneficiary or beneficiaries.
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".

Trusts: Comparisons & Distinctions

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**.

Trusts: Comparisons & Distinctions (cont)

	A characteristic of a charge (but not a trust) is a **right of redemption**.
Trusts vs Agency:	Both are subject to **fiduciary duties**.
	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 = - the absolute **transfer of full legal ownership** - donor is **full legal owner** - donee becomes **full legal owner** upon transfer - **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

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.

Private Express Trusts: Requirements (cont)

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**...........

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: - 21 years - as long as the law allows - 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

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**:	
	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**.	

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Trusts Arising by Operation of Law (cont)

	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.
		E.g. Constructive trusts imposed to: - prevent fraud - perfect an imperfect gift - 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

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**.

Beneficiaries: Rights (cont)

		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.
		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 a **reserved power** to do so.
Can have **one or more beneficiaries** who may have **very different entitlements**.

Beneficial Entitlement: Fixed & Discretionary (cont)

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) and others a **right to capital** (capital beneficiaries).
Life interest trust:	A type of successive interest trust.
	A beneficiary (life tenant) receives income during their lifetime.
	Another beneficiary (remainderman) becomes entitled to the capital after the life tenant's death.

Beneficial Entitlement: Discretionary

A trust under which the trustees have **discretion to distribute** between the objects.

The settlor **determines the objects**, but the trustees must decide **who** from within that class of objects is to receive what sum.

Discretionary trusts are flexible.

Enable a settlor to make **provision for different beneficiaries** according to their **future needs**

The objects of a discretionary trust are only **potential beneficiaries** - they have **no equitable interest** in the trust property until the **discretion is exercised** in their favour.

The objects **do** have a **right to ensure that the trustees exercise their powers properly**.

Power of appointment: a right to choose who, from within a specified class of objects receives, property.

Saunders v Vautier

............**Basic Principle**..........

A sole adult beneficiary of **sound mind**, with a **vested interest** in the trust property, is entitled to direct the trustee to **transfer legal title** to them, thereby **bringing the trust to an end early**.

If someone else could obtain a beneficial interest, the beneficiary has **no entitlement** to have it transferred to them and become the absolute owner.

If each beneficiary has a **distinct interest** in the trust property, which can be **severed without impacting the others**, they can **separately exercise** their Saunders v Vautier rights.

In more **complex fixed trusts** - e.g. successive interest trusts - the rights of beneficiaries are **not easily severable**, so Saunders v Vautier rights only exercised if **all beneficiaries agree** (for which they must be of **age and capacity**).

Trustee Powers: Investment and Delegation

............**Power of Investment**..........

A trustee can make **any kind of investment** that they could make if they were absolutely entitled to the trust assets.

A trustee **cannot** invest in **land overseas** under s 8 TA 2000 (unless allowed in trust instrument).

Trustees must:
- consider the **standard investment criteria** in s 4; and
- take advice (s 5).

Standard investment criteria:	Trustees must invest **suitably** and **diversify** the investments.
Advice:	Trustees must obtain **proper advice** provided by a person who the trustee **reasonably believes** is **qualified** to give it by their **ability and experience** in investing.

Trustee Powers: Investment and Delegation (cont)

	Trustees **do not** need to seek advice if they **reasonably conclude** that in all the circumstances it is unnecessary to do so.

These obligations can be **excluded, restricted or extended** - s 6.

............Statutory duty of care...........

Trustees must exercise such **care and skill** as if **reasonable** in the circumstances.

The **standard of care** is **higher** for **professional trustees**.

The standard of care is **raised** for **lay trustees** who are appointed due to **special knowledge/experience**.

The statutory duty of care **only applies** to trustee acts in **Sch 1 TA 2000**.

............Power to acquire land...........

Trustees have the power to acquire **freehold/leasehold land in the UK** but **not** overseas - S 8.

This power can be exercised for **investment** purposes but also more widely (e.g. a dwelling for a beneficiary).

The statutory duty of care always applies here.

............Power of Delegation...........

Trustees can delegate their powers of investment and aquisition of land.

Delegating investment powers:	Trustees **must** delegate investment powers by an **agreement evidenced in writing** - s 15.
	Agreement should include **term ensuring compliance** with a **written policy statement** prepared by trustees.
	Policy statement should give **guidance**.

Trustees must comply with the **statutory duty of care** when selecting and entering into agreements with agents.

If trustees **comply with these duties**, they will **not** be vicariously liable for any loss caused by the **agent acting negligently**.

Trustees: No Conflict Rule

Self-dealing:	A trustee **cannot** purchase assets from the trust or **sell assets** to the trust.
	If a trustee does so, the transaction will be **voidable**.
	Beneficiaries can **seek to rescind** the transaction.
	May be **allowed** by the **trust instrument**.
Fair-dealing:	A trustee may want to **directly transaction with a beneficiary** to buy their **beneficial interest** under the trust.
	The trustee must be able to demonstrate that the transaction was **conducted fairly**.
	Trustee should have made **full disclosure** to the beneficiary, acted **honestly and fairly** and did **not take advantage** of the beneficiary.
	If the trustee **cannot** demonstrate this, the transaction will be **voidable**.
	Beneficiaries can **seek to rescind** the transaction.
	May be **allowed** by the **trust instrument**.

If the breach causes a **loss to the principal**, they can sue the fiduciary personally for **breach of fiduciary duty**.

If the breach results in a **profit to the principal**, they may not require a remedy although they may wish to **end the fiduciary relationship**.

Trustees: No Conflict Rule (cont)

If the breach results in a **profit to the fiduciary**, the principal can **recover the profit** from the fiduciary.

Trustees: No Profit Rule

Direct profit:	Trustees **cannot** make a profit from the trust.
	Any income made **directly out of the trust's property** belongs to the trust.
Indirect profit:	Trustees must avoid making **unauthorised personal profits** which arise from the performance of their role.
	Where a trustee obtains a **director** position **as a result of being a trustee**, they must **not** accept remuneration for this capacity and **pay it to the trust**.
	This rule does **not** apply if the trustee is **independently appointed** as director.
	The **trust instrument** may allow trustees to retain remuneration.
	The trustee may also seek the **fully informed consent** of **all** beneficiaries.
Exploiting opportunities:	A trustee **cannot** keep a profit made as a result of an opportunity that comes to them **in the course of performing their fiduciary duties**.
	This rule is **very strict**.
Bribes/secret commissions:	A trustee **cannot** accept money from a **third party** in return for performing their role in a particular way.

Breach of this rule will result in the trustee being **stripped of their profits**.

Beneficiaries may make a **personal claim** requiring the trustee to pay back an amount **equivalent to the profit** made.

Beneficiaries may make a **proprietary claim** that the profit is held on **constructive trust**, allowing **protection from insolvency** and an ability to **trace into any subsequent profits** made by the trustee.

Beneficial Entitlement: Fixed & Discretionary