

Definitions

Trust	Management devise
Bifurcated Transfer	Trustee owns legal title but not equitable
Principal	Original trust property and any increase in value
Income	Money invested by the trust
Revocable	Majority presumes irrevocable; UTC presumes revocable
Mandatory Trust	Trustee must make distributions from the trust
Discretionary Trust	Trustee makes distributions in her discretion
Remedial Trust	Remedy created by operation of law

People

Settlor	Person who creates trust
Trustee	Person who manages the trust, has legal title to the property
Beneficiary	Receives the benefit of the trust; has equitable title to property

Trust Distributions

Mandatory Trust	Trustee has no discretion as to whether she will make a distribution
Discretionary Trust	Trustee has complete discretion as to whether she will make a distribution
Support Trusts	Trustee makes distributions to support the beneficiary

Asset Protection Trust

Goal	Shield beneficiaries from creditor's claims
Support Trusts	Creditors can reach only when trustee has made a support payment
Discretionary Trust	Creditors can only reach when trustee has made a payment

Asset Protection Trust (cont)

Spendthrift Trust	Trust expressly restricts the beneficiary's power to alienate her interest; creditors can only reach when trustee makes a payment
Exceptions	spousal or child support; provision of basic necessities; federal or state tax liens

Principal v. Income

Old Rule	life beneficiary entitled to income; remainder interest entitled to principal
Modern Approach (UPAIA)	Trustee can re-characterize and reallocate as necessary to fulfill trust purpose; allocations must be reasonable

Express Trusts

Express Trust	Owner expressly indicates intent to create trusts
Private Express Trusts- Intent	"trust words" create presumption of trust (look out for precatory language); oral trusts are valid unless conveying real property or devise
Private Express Trusts- Res	must be property in the trust (unless pour-over trust- trust my be in writing at time will is executed)
Private Express Trusts- Purpose	valid if not illegal or contrary to public policy
Private Express Trusts- Beneficiaries	Must be ascertained beneficiary-specific person or criteria

Express Trusts (cont)

Charitable Trust	Must have charitable purpose; Rule Against Perpetuities does not apply; Cy Pres doctrin
Cy Pres Doctrine	Court can modify a trust if the trusts charitable purpose is not longer possible; must have had a general charitable purpose (if not goes to resulting trust); goal is to make as close to original purpose as possible
Charitable Trust- Standing	Attorney General's office has standing to enforce; UTC gives Settlor standing as well
Creation of Express Trust- Inter Vivos	during Settlor's life- declaration of trust (Settlor declares herself the holder of property in trust and is trustee); deed of trust (settlor conveys property to a trustee)
Creation of Express Trust- Testamentary Transfer	Created according to terms of a will

Creditor's Ability to Reach

Rule 1	Beneficiary's equitable interest in trust property is freely alienable unless statute or trust instrument limit this right
Rule 2	Creditor cannot reach trust principal or income until such amount becomes payable to the beneficiary or the beneficiary can demand it



Remedial Trusts

Equitable Remedy created by operation of law; passive in nature (trustee's only duty is to convey property back to settlor)

Resulting trusts used when a trust fails; property returned to settlor or estate; avoid unjust enrichment

Purchase-Money Resulting Trust person one buys property but title is taken in person two's name (person two is not the natural object of person one's bounty)

Avoiding a Resulting Trust Create a gift-over clause

Constructive Trusts Remedy used to prevent unjust enrichment if third party takes advantage of settlor; look for wrongful conduct directed toward settlor that caused settlor to create trust

Termination

Expiration Express trust can expire at the end of a stated term

Material purpose Automatically terminates when the trust purpose is satisfied

Clafin Doctrine Unfulfilled material purpose; trustee can block premature termination if the trust is still serving some material purpose

Settlor's power Unilateral termination if expressly reserved the right; settlor and beneficiaries must consent if right to terminate was not expressly reserved

Modification

Settlor alive Unilaterally modify if reserved right; otherwise, all beneficiaries must consent and proposed change must not interfere with primary purpose of trust

Settlor dead All beneficiaries agree to modification consistent with material purpose or unforeseen event frustrated purpose of trust

Trustee cannot modify or terminate through unilateral action

Trustee Removal

Remedy Trustee breached a fiduciary duty or grossly mismanaged the property

Resignation Written notice, if settlor is alive, to co-trustees and beneficiaries

Trustee's Power

Trust Documents Look for powers here first- if silent, look to statutory and common law

Modern Trend Grant trustee all those powers necessary to act as a reasonably prudent person

Trustee's Duties

Loyalty Did trustee act reasonably?; Self-dealing is a breach (always per se breach)

Care Did trustee act in good faith?; duty of ordinary prudence

Delegation common law- never allowed to delegate; modern law permits delegation

Investments old rule- limited to specific list of investments; modern-prudent investor rule (expected to diversify assets and spread risk of loss)

Trustee's Duties (cont)

Impartiality balance competing interests of present and future beneficiaries

Administrative duties Inform beneficiaries about nature of trust property; duty to account for actions taken on behalf of trust

Future interests

Review Property Sheet

