

Trusts

LAW4170 Notes

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Topic 1: Introduction and classification of trusts

What is a trust?

According to *Jacobs*, [101] a trust exists when the owner of a legal or equitable interest in property is bound by an obligation, recognised by and enforced in equity, to hold that interest for the benefit of others, or for some object or purpose permitted by law.

- According to Bernard Rudden, an express trust is 'essentially a gift, projected on a plane of time and so subjected to a management regime'

A trust is difficult to define, so we just define their features:

- Trusts have to be for identifiable beneficiaries UNLESS for charitable purposes – enough if have valid charitable purpose
- A beneficial interest can in turn be held in trust
 - Cf: CL only recognises a trustee as a legal title holder, not as a trustee
- As the obligation is 'annexed' to the trust property, any breach of that obligation attracts proprietary consequences ('right in rem' against third parties)

Special features of trusts

- Only enforceable in equity; not recognised by common law
 - CL looked at trust and would not have seen equitable owners
- Trust has no legal personality
 - Trustee is legal person
 - All of business hence needs to be done by trustee or to the trustee
- Trustee's obligation is personal, but annexed to trust property
 - Trusts comes from court of equity
 - Cannot have a trust without trust property
- Trustee's obligation is also fiduciary
- Trustee – beneficiary relationship
 - Fiduciary obligations negative
 - Trustee also owes positive obligations
 - When trustee acts, they cannot act in breach of profits and conflicts rule
- Trusts are a way of managing assets
 - Wealth management
 - Must be over specific property, but any kind of property can be trust property
 - Equity is flexible – will recognise any form of asset as a subject of a trust
- The 'split' in title
 - Method of managing assets gives total control to one but not the enjoyment of the assets (unless also beneficiary)
 - Unique to English based law
 - Need to keep trust property separate from own
 - Metaphorical split – equity v beneficiary
 - If disappears – equity has no interest
 - If trustee also one of beneficiary and trustee buys out interest and becomes sole beneficiary – metaphorical split evaporates and no more trust

Requirements

- (1) A **trustee** who holds title (but the identity of the trustee is not relevant to validity of trust)
- (2) **Beneficiaries** who must be ascertainable, (objects of the trust) or a charitable purpose
- (3) Identifiable **trust property** (subject matter)
- (4) **Personal obligation** attached to property.
 - Is the all important aspect of the trust.
 - Beneficiaries' rights only arise because of trustee's obligations in relation to property.
 - Is the original core of a trust

- A trustee has ownership of trust assets – subject to obligation to hold it for benefit

Classification of trusts

All trusts depend on some form of intention, but it is how the intention operates that creates the distinctions.

Express (OUR FOCUS)	Resulting	Constructive
Dependent on intention to create a trust	Arise by operation of law (never intended that party benefit) – ie gave money to another to buy house for you and they don't give it to you causes resulting trust	Imposed where it would be <u>unconscionable</u> for party holding property to assert ownership
Relevant intention is to benefit another	Arise where person DID not intend to benefit party now holding property	Wide variety of applications
Positive intention on person to create trust to do so		Remedial function imposed upon people when court believes just and fair to do so
What type of intention? Intention that somebody else get the benefit of the property		Go to court to get declaration. Doesn't depend upon person holding property having intention to hold trust – actually quite the contrary – absent intention to create trust

Express trusts

Who is involved?

- **Trustee:** can be one or more person (including non-natural person). A trustee can also be a beneficiary, so long as not sole beneficiary
- **Beneficiary:** can be one or more person (including non-natural person) OR an object
- **Settlor:** Can be a trustee (in case of trust by declaration) or one of trustees. Can also be *one* of beneficiaries
- Attorney-General: Person who standing to enforce a charitable trust

Trustee (holds property)	Beneficiary (object)	Settlor
<ul style="list-style-type: none"> • An individual person or member of a board given control or powers of administration of property in trust with a legal obligation to administer it solely for the purposes specified • Trustee = legal titleholder of trust property (subject matter) • Dual ownership ('split') of property: legal (or equitable) title vested in trustee; and equitable (beneficial) ownership vested in beneficiary (creates unity of equitable and legal title – resulting in absolute unity) 	<ul style="list-style-type: none"> • Any person who can benefit from the trust – can have natural or non-natural (e.g. corporate) person – trust may be created for purpose rather than for person. Can be one or more person (including non-natural person) OR can be an object. • A beneficiary of trust is a person for whom a trust was created, and who receives the benefits of that trust 	<ul style="list-style-type: none"> • Creates trust – can be trustee (in case of trust by declaration) or one of trustees and can be one of beneficiaries – not encouraged to be only beneficiary • An individual/corporation that establishes a trust (by transfer to trustee, or by declaration) – parting with a right of property, real or personal – which is held and administered by a trustee for the benefit of another (beneficiary). Settlor then removed from equation

<ul style="list-style-type: none"> • Can have 1 > people acting in role of trustee. If trust of land, in VIC can only have 4 people act as trustee unless charitable trust (MORE) (s 40 <i>Trustee Act (Vic)</i> 1958) • If only one trustee risk he/she may be untrustworthy – put them in position of legal owner. Beneficiary doesn't have much information, greater risk of malfeasance • 2 trustees, need agreement trustees have to act unanimously (unless charitable trust) • 3 = reasonable, but it is difficult to find agreements • Super trusts = more trustees 	<ul style="list-style-type: none"> • There are the two main permissible objects of a trust: PERSONS OR PURPOSES – difference inherent in each 	<p>Types</p> <ul style="list-style-type: none"> • By transfer – settlor is rid of legal title • By declaration – settlor is rid of beneficial title
<ul style="list-style-type: none"> • Nothing to stop trustee also being one of beneficiaries (common) • Trustee cannot be sole trustee and sole beneficiary (if trustee only beneficiary – trust evaporates – split title disappears) 	<p>Persons = Beneficiaries</p> <ul style="list-style-type: none"> • Persons include natural and legal persons (cestui que trust) (private trusts) • Settlor can determine beneficiaries (fixed trust) or leave it to the trustee to decide according to some criteria (discretionary trust) 	<ul style="list-style-type: none"> • Any person or corporation can be the settlor of the trust, provided they have legal capacity • Where a trust is established by self-declaration, the settlor is also the trustee • The settlor can also be a beneficiary
<ul style="list-style-type: none"> • Bankruptcy/insolvency does not create automatic disqualification, Does create grounds for a beneficiary to seek a trustee's removal 	<p>Purpose = Beneficiary</p> <ul style="list-style-type: none"> • Only charitable purposes are valid (some exceptions) • These are regarded as public trusts • AG – only person with sufficient standing to enforce charitable trust 	<ul style="list-style-type: none"> • The settlor usually has no rights with respect to the trust property once a valid trust is created unless: <ul style="list-style-type: none"> (i) They make themselves trustee (thus keep legal title), (ii) They are a beneficiary (thus keep equitable title) or (iii) Expressly reserve right to revoke trust))

Subdivisions of express trusts

Time	<i>Intervivos</i> - created during settlor's life (come into effect immediately upon creation) <i>Testamentary</i> – created by will of testator – come into effect on death
Who benefits?	<i>Public express trusts</i> – benefit public or section of public (charitable trust) <i>Private express trusts</i> – benefit named or identifiable individuals, groups
Nature of beneficiary's interests	<i>Fixed interest trusts</i> – beneficiary's interest specified (e.g. 1/2) <i>Discretionary trusts</i> – in favour of class of objects trust selects from (e.g to such of A, B and C as trustee selects)

A trust exists when the owner of a legal or equitable interest in certain property is bound by an obligation, recognised and enforced in equity, to hold that interest for the benefit of others, or for some object or purpose permitted by the law.

An **intervivos** trust can be created in two ways: