

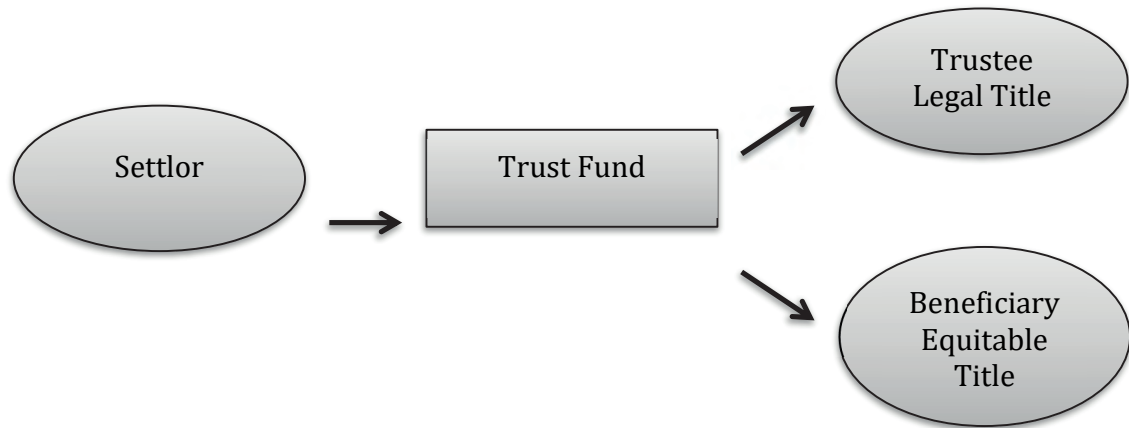
I. INTRODUCTION

A. Learning Objectives: After this lecture, you will be able to:

1. Distinguish between different types of trusts.
2. Evaluate the validity of a trust.
3. Identify issues related to administration of a trust.
4. Recognize and evaluate a transfer of interest in a trust.
5. Determine how to modify or terminate a trust.

B. Overview

1. A **trust** is nothing more than the splitting of legal and equitable title.
 - a. Technically, it is a fiduciary relationship where one party holds legal title to property for the benefit of another who holds equitable title.



C. Types of Trusts

Types of trusts	Express Trusts	Implied Trusts
Brief Description	Created intentionally	Created by operation of law
Sub-types	private	constructive
Brief Description	generally, are created to benefit private beneficiaries	generally, are created for a charitable purpose or for charities & have some differences
		resulting
		imposed to fix wrongdoing
		imposed where circumstances require, irrespective of any wrongdoing

1. Express trusts (Trusts created intentionally)

- a. There are two types of express trusts:

- (1) **private express trusts**
 - (a) created to benefit private, non-charitable beneficiaries.
 - (2) **charitable trusts**
 - (a) resemble private express trusts but have some significant, distinguishing characteristics, including creation for some charitable purpose or to benefit charitable beneficiaries.
2. **Implied trusts (Trusts that arise by operation of law)**
- a. There are two types of implied trusts:
 - (1) **constructive trusts**
 - (a) ***Imposed to deprive a wrongdoer from retaining improperly obtained property.***
 - (2) **Resulting trusts**
 - (a) ***Imposed irrespective of wrongdoing when the circumstances require it.***
 - (b) Most often arises when a settlor transfers full legal but fails to transfer full equitable title.
 - 1) Settlor's reversion in equity is called a resulting trust.
 - b. Implied trusts are: ***equitable remedies.***

II. CREATING EXPRESS TRUSTS

- A. **Parties to a Trust**
- 1. Every trust has **three** parties
 - a. More than one party can fit each role, and
 - b. Each party can fit more than one role.
 - 2. The Parties:
 - a. settlor: ***The person who sets up the trust***
 - b. Trustee: ***The person who has legal title to the trust***
 - c. Beneficiary: ***The person who has the equitable title and who uses and enjoys the property of the trust***
 - (1) Income Beneficiary: ***Present interest in the trust fund***
 - (2) Remainder Beneficiary: ***Remainder interest in the trust fund***
 - 3. The **settlor** creates the trust by transferring assets to a trustee with manifest intent to create a trust relationship.
 - a. A settlor can set up two types of trusts:
 - (1) ***Inter vivos trust, during his lifetime as a gift***
 - (2) ***Testamentary trust, through his will***
 - b. When a settlor makes himself trustee, the trust is created by declaration of trust.
 - (1) In some states, titled assets (i.e., assets whose ownership is reflected in a written document such as a title, deed, or stock certificate) must be

retitled in the name of the settlor "as trustee" in order for the trust to be valid.

- (2) The declaration can be **oral** unless:
 - (a) ***The trust assets include real property, in which case the Statute of Frauds requires that it be written OR***
 - (b) ***or the trust is testamentary, in which case the statute of wills requires that it be written.***
4. The **trustee** is the legal owner of trust property, who holds it for the benefit of the beneficiaries. Legal title to, and responsibility for, the management of the trust property resides in the trustee.
 - a. A trust must have a trustee, but failure to designate or appoint a qualified trustee will not necessarily cause the trust to fail. Instead, the court will appoint one.
 - b. Co-Trustees
 - (1) Where two or more persons have been named as co-trustees, they are ordinarily considered ***joint tenants with regard to the legal title over the trust fund.***
 - (2) The will may override this and name a successor trustee to step in and serve instead of or along with a prior trustee.
 - (3) Co-trustees who are unable to reach a unanimous decision ***may act by majority decision.***
 - (4) A co-trustee may formally dissent and ***protect himself from liability down the road if the other trustees have acted imprudently.***
 - (5) A trustee may resign or be removed for cause.
 - (a) ***The trust will not terminate and another trustee will be appointed.***
 - (6) When the trust terminates: The trustee transfers his interest to ***the beneficiaries and ceases to have legal authority to exert control over the property beyond what is necessary to wind up the affairs of the trust.***
5. **Beneficiaries** are the equitable owners of the trust property.
 - a. ***There must always be a beneficiary in existence who can enforce the trust against the trustee.***
 - (1) A settlor can be the trustee so long as there is a beneficiary in existence who can enforce the trust against the trustee.
 - (2) The settlor may also be the beneficiary of the trust.
 - (3) If a sole trustee is the sole beneficiary, the trust will collapse because the interests will merge.

B. General Effects of Trust Creation

1. Rights of the settlor:
 - a. Once a trust has been created, unless the settlor is also a trustee or a beneficiary, ***the settlor no longer owns the assets because they have been transferred into the trust.***

2. Rights and duties of the trustee:
 - a. The trustee has legal title to the assets and is obligated to adhere to the terms of the trust with respect to the preservation, enhancement, and distribution of the trust property to the beneficiaries.
 - (1) A trustee is a fiduciary of the trust
 - (2) A trustee must be given **some active duties** to direct him with respect to the trust property in order for the trust to be valid.
 - (a) If the trustee does not have active duties:
 - 1) ***The trust is considered “passive” or “dry,” and title to the trust assets will pass directly to the beneficiaries.***
 - 2) Beneficiaries will then hold both legal and equitable title or full fee simple absolute.
 - (3) Duties do not have to be spelled out.
 - (a) ***The court just must be able to reasonably interpret what is to be done.***
 - (4) Duties of the trustee vary by trust.
 - (a) Duties commonly assigned by statute or legally implied include the obligations:
 - 1) ***to preserve property;***
 - 2) ***to invest prudently;***
 - 3) ***to administer the trust pursuant to the settlor’s directions;***
 - 4) ***to exercise fairness with respect to all beneficiaries, regardless of the nature of their interests.***
3. Rights of the beneficiaries:
 - a. The beneficiaries are the equitable, beneficial owners of the trust assets, but cannot ordinarily affect or alter the dispositive or administrative provisions of the trust.
 - b. Instead, beneficiaries must wait for the property to be distributed to them before being able to exercise full control over the property, free of the trust.

C. Elements Necessary to Create a Trust

1. A valid trust requires:
 - a. ***a settlor, with the requisite capacity, express a present intent to create a trust (i.e., to create the trust now, not some time in the future)***
 - b. ***delivery of specific trust property [Rest. § 2, comment i];***
 - c. ***an ascertainable beneficiary [Rest. § 44];***
 - d. ***active duties imposed on the trustee [Rest. § 6];***
 - e. ***a proper trust purpose; and***
 - f. ***a trustee [Rest. § 2, comment g].***
2. Intent to Create a Trust

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