21 DIFFERENT TYPES OF TRUSTS

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Trusts go by many different names, depending on the characteristics or the purpose of the trust. Because trusts often have multiple characteristics or purposes, a single trust might accurately be described in several ways. For example, is often an express trust, which is also a , and might include an incentive trust, and so forth.

- **Constructive trust.** Unlike an express trust, a constructive trust is not created by an agreement between a settlor and the trustee. A constructive trust is imposed by the law as an "equitable remedy." This generally occurs due to some wrongdoing, where the wrongdoer has acquired legal title to some property and cannot in good conscience be allowed to benefit from it. A constructive trust is, essentially, a legal fiction. For example, a court of equity recognizing a plaintiff's request for the equitable remedy of a constructive trust may decide that a constructive trust has been created and simply order the person holding the assets to deliver them to the person who rightfully should have them. The constructive trustee is not necessarily the person who is guilty of the wrongdoing, and in practice it is often a bank or similar . The distinction may be finer than the preceding exposition in that there are also said to be two forms of constructive trust, the institutional constructive trust and the remedial constructive trust. The latter is an "equitable remedy" imposed by law being truly remedial; the former arising due to some defect in the transfer of property.

- **Directed trust.** In these types, a *directed trustee* is directed by a number of other trust participants in implementing the trust's execution; these participants may include a distribution committee, trust protector, or . The directed trustee's role is administrative which involves following instructions, holding legal title to the trust assets, providing fiduciary and tax accounting, coordinating trust participants and offering dispute resolution among the participants

- **Dynasty trust** (also known as a **generation-skipping trust**). A type of trust in which assets are passed down to the grantor's grandchildren, not the grantor's children. The children of the grantor never take title to the assets. This allows the grantor to avoid the estate taxes that would if the assets were transferred to his or her children first. Generation-skipping trusts can still be used to provide financial benefits to a grantor's children, however, because any income generated by the trust's assets can be made accessible to the grantor's children while still leaving the assets in trust for the grandchildren.

- **Express trust.** An express trust arises where a settlor deliberately and consciously decides to create a trust, over their assets, either now, or upon his or her later death. In these cases this will be achieved by signing a trust instrument, which will either be a will or a trust deed. Almost all trusts dealt with in the trust industry are of this type. They contrast with resulting and constructive trusts. The intention of the parties to create the trust must be shown clearly by their language or conduct. For an express trust to exist, there must be certainty to the objects of the trust and the trust property. In the USA Statute of

Frauds provisions require express trusts to be evidenced in writing if the trust property is above a certain value, or is real estate.

- **Fixed trust.** In a *fixed trust*, the entitlement of the beneficiaries is fixed by the settlor. The trustee has little or no discretion. Common examples are:
    - a trust for a minor ("to x if she attains 21");
    - a **life interest** ("to pay the income to x for her lifetime"); and
    - a **remainder** ("to pay the capital to y after the death of x")

- **Hybrid trust.** A *hybrid trust* combines elements of both fixed and discretionary trusts. In a hybrid trust, the trustee must pay a certain amount of the trust property to each beneficiary fixed by the settlor. But the trustee has discretion as to how any remaining trust property, once these fixed amounts have been paid out, is to be paid to the beneficiaries.

- **Implied trust.** An implied trust, as distinct from an express trust, is created where some of the legal requirements for an express trust are not met, but an intention on behalf of the parties to create a trust can be presumed to exist. A resulting trust may be deemed to be present where a trust instrument is not properly drafted and a portion of the equitable title has not been provided for. In such a case, the law may raise a resulting trust for the benefit of the grantor (the creator of the trust). In other words, the grantor may be deemed to be a beneficiary of the portion of the equitable title that was not properly provided for in the trust document.

- **Incentive trust.** A trust that uses distributions from income or principal as an incentive to encourage or discourage certain behaviors on the part of the beneficiary. The term "incentive trust" is sometimes used to distinguish trusts that provide fixed conditions for access to trust funds from discretionary trusts that leave such decisions up to the trustee.

- **Inter vivos trust** (or **living trust**). A settlor who is living at the time the trust is established creates an *inter vivos* trust.

- **Irrevocable trust**. In contrast to a revocable trust, an irrevocable trust is one in which the terms of the trust cannot be amended or revised until the terms or purposes of the trust have been completed. Although in rare cases, a court may change the terms of the trust due to unexpected changes in circumstances that make the trust uneconomical or unwieldy to administer, under normal circumstances an irrevocable trust may not be changed by the trustee or the beneficiaries of the trust.

- **Offshore trust.** Strictly speaking, an offshore trust is a trust which is resident in any jurisdiction other than that in which the settlor is resident. However, the term is more commonly used to describe a trust in one of the jurisdictions known as offshore financial centers or, colloquially, as tax havens. Offshore trusts are usually conceptually similar to onshore trusts in common law countries, but usually with legislative modifications to make them more commercially attractive by abolishing or modifying certain common law restrictions. By extension, "onshore trust" has come to mean any trust resident in a hightax jurisdiction.

- **Personal injury trust**. A personal injury trust is any form of trust where funds are held by trustees for the benefit of a person who has suffered an injury and funded exclusively by funds derived from payments made in consequence of that injury.

- **Private and public trusts.** A *private trust* has one or more particular individuals as its beneficiary. By contrast, a *public trust* (also called a *charitable trust*) has some charitable end as its beneficiary. In order to qualify as a charitable trust, the trust must have as its object certain purposes such as alleviating poverty, providing education, carrying out some religious purpose, etc. The permissible objects are generally set out in legislation, but objects not explicitly set out may also be an object of a charitable trust, by analogy. Charitable trusts are entitled to special treatment under the law of trusts and also the law of taxation.

- **Protective trust.** Here the terminology is different between the UK and the USA:
  - In the UK, a protective trust is a life interest which terminates on the happening of a specified event such as the bankruptcy of the beneficiary or any attempt by him to dispose of his interest. They have become comparatively rare.
  - In the USA, a *protective trust* is a type of trust that was devised for use in estate planning. (In another jurisdiction this might be thought of as one type of asset protection trust.) Often a person, *A*, wishes to leave property to another person *B*. *A* however fears that the property might be claimed by creditors before *A* dies, and that therefore *B* would receive none of it. *A*could establish a trust with *B* as the beneficiary, but then *A* would not be entitled to use of the property before they died. Protective trusts were developed as a solution to this situation. *A*would establish a trust with both *A* and *B* as beneficiaries, with the trustee instructed to allow *A* use of the property until they died, and thereafter to allow its use to *B*. The property is then safe from being claimed by *A*'s creditors, at least so long as the debt was entered into after the trust's establishment. This use of trusts is similar to life estates and remainders, and are frequently used as alternatives to them.

- **Purpose trust.** Or, more accurately, non-charitable purpose trust (all charitable trusts are purpose trusts). Generally, the law does not permit non-charitable purpose trusts outside of certain anomalous exceptions which arose under the eighteenth century common law (and, arguable, *Quistclose* trusts). Certain jurisdictions (principally, offshore jurisdictions) have enacted legislation validating non-charitable purpose trusts generally.

- **Resulting trust.** A resulting trust is a form of implied trust which occurs where (1) a trust fails, wholly or in part, as a result of which the settlor becomes entitled to the assets; or (2) a voluntary payment is made by A to B in circumstances which do not suggest gifting. B becomes the resulting trustee of A's payment.

- **Revocable trust.** A trust of this kind may be amended, altered or revoked by its settlor at any time, provided the settlor is not mentally incapacitated. Revocable trusts are becoming increasingly common in the US as a substitute for a will to minimize administrative costs associated with probate and to provide centralized administration of a person's final affairs after death.

- **Secret trust.** A *post mortem* trust constituted externally from a will but imposing obligations as a trustee on one, or more, legatees of a will.

- **Simple trust.**
  - In the US jurisdiction this has two distinct meanings:
    - In a *simple trust* the trustee has no active duty beyond conveying the property to the beneficiary at some future time determined by the trust. This is also called a *bare trust*. All other trusts are *special trusts* where the trustee has active duties beyond this.
    - A simple trust in Federal income tax law is one in which, under the terms of the trust document, all net income must be distributed on an annual basis.
  - In the UK a bare or simple trust is one where the beneficiary has an immediate and absolute right to both the capital and income held in the trust. Bare trusts are commonly used to transfer assets to minors. Trustees hold the assets on trust until the beneficiary is 18 in England and Wales, or 16 in Scotland.[17]

- **Special trust.** In the US, a special trust, also called complex trust, contrasts with a simple trust (see above). It does not require the income be paid out within the subject tax year. The funds from a complex trust can also be used to donate to a charity or for charitable purposes.

Special Power of Appointment trust (SPA Trust). A trust implementing a special power of appointment to provide asset protection features