TRUSTS ESSAY SHORT OUTLINE

TRUST DEFINED – A trust is a fiduciary relationship in which a trustee holds legal title to specific property under a fiduciary duty to manage, invest, safeguard, and administer the trust assets and income for the benefit of designated beneficiaries, who hold equitable title. The testator or grantor who creates the trust is called the trustor or settlor.

CREATION OF A TRUST – to create a valid trust there must be INTENT by the settlor to presently create a trust, TRUST PROPERTY, one or more BENEFICIARIES, a TRUSTEE, and a valid trust purpose.

SETTLOR – the settlor must have capacity to convey. Settlor lacks legal capacity when there is undue influence, fraud, or duress. This renders the trust void. To create an irrevocable trust, settlor must have legal power to convey the trust property.

Undue Influence – contestants must establish that the product of the influence was a trust that would not have been created “but for” the influence.

INTENT

Precatory Language – language expressing a hope, wish, or desire does not create a trust. The trustee named under such gift generally can take it outright for himself or choose to hold it in trust for the named beneficiary. The inference of trust may be overcome if:

• The directions aren’t vague, but are definite and precise
• The directions are addressed by a decedent to his executor or administrator
• Failure to impose a trust results in an unnatural disposition by the testator
• Extrinsic evidence shows that the transferor had providing the intended beneficiary before executing the instrument.

TRUSTEE – A trust will not fail because of death, removal, incapacity, or resignation of trustee. If the settlor failed to name a successor trustee, the court will appoint one. A person can create a trust by declaring himself trustee of another.

Duties of Trustee –

• Duty to Administer Trust in a good faith and prudent manner
• Duty of Loyalty – trustee cannot represent both her personal interest and the interest of the trust. (ie. No self-dealing).
  o Specific Self Deal Rules
    • Cannot buy or sell trust assets
    • Cannot buy assets from one trust to another
    • Cannot borrow trust funds or make loans to trust
• Duty of Impartiality – Trustee must act for the benefit of the beneficiaries. If there is more than one beneficiary, she must act impartially in investing and managing the trust taking into account the beneficiaries different interests.
• Duty to Separate and Earmark Property – trust assets must be physically separate from trust’s personal assets and assets of other trusts. NO COMMINGLING.
• Duty to Perform Personally – Trustee must perform functions that a reasonably prudent person wouldn’t delegate
  o Exception – A trustee can delegate investment and management decisions as long as the trustee uses reasonable care, skill, and caution in 1) selecting the agent; 2) establishing the scope and terms of the delegation; AND 3) monitors the agents performance and compliance with terms.
• Duty to Preserve Trust Property and Make It Productive
  o Collect all claims due the trust
  o Lease land and manage it
  o Record recordable documents
  o Invest trust funds.
• Remedy to Beneficiary for Violation
 Beneﬁciary can “ratify” or accept the improper conduct

Sue for the full “surcharge” or the full amount of the loss to the trust

**Removal of Trustee** – a court may remove a trustee if his continuation would be detrimental to the interest of the beneﬁciaries. Grounds for Removal are:

- Commission of a serious breach of trust
- Legal or practical incapacity to administer trust
- Unﬁtness for the position such as drunkenness, extreme old age, and other practical inability
- Refusal to post bond or account
- Existence of a signiﬁcant conﬂict of interest
- Trustee’s insolvency
- Extreme friction or hostility between the trustee and beneﬁciaries where such hostility is likely to interfere with the proper administration of the trust.

**Prudent Investor Rule** – a trustee has the basic duty to invest prudently. FL applies this rule in determining the propriety of investments made by the trustee. Trustee must take into account both probable income and the safety and preservation of principal. Trustee must exercise reasonable care, skill, and caution.

- Investment performance is measured by OVERALL RETURN
- Diversiﬁcation of Investments

**TRUST PROPERTY** – where there is no trust property, the trust fails because the trustee has no property to manage.

- A trust of tangible property need not be in writing, but a trust of real property must be in writing.
- If the settlor promised to create a trust in the future and the promise is supported by consideration (ie. The settlor made a contract to create a trust), the trust can arise when the property is acquired w/o any manifestation of intent.

**BENEFICIARIES** – A private trust requires DEFINITE, ASCERTAINABLE beneﬁciaries. A beneﬁciary is necessary to validate every trust except charitable trusts, and honorary trusts.

- Beneﬁciaries need not be identiﬁed at the time the trust is created, but they must be susceptible to identiﬁcation by the time their interests are to come into enjoyment.

**PURPOSE** – a trust is invalid if its purpose is illegal, contrary to public policy, impossible to achieve, or intended to deﬁraud settlor’s creditors or based on illegal consideration.

**RULE AGAINST PERPETUITIES** – violations can arise in creating trusts. FL has adopted a 360 year vesting period. A non-vested property is valid if: 1) when the interest created is certain to vest or terminate w/n the common law period of 21 years after the death of a life in being OR 2) it actually vests or terminates w/n 360 years.

**SPENDTHRIFT TRUSTS** – the beneﬁciary cannot voluntarily or involuntarily transfer his interest in the trust, and his creditors are precluded from reaching it to satisfy their claims.

Once trust property is distributed from the trust, it loses its trust character and creditors may reach it.

**Exceptions:** A spendthrift clause cannot be used to shield the beneﬁciary from:

- His own creditors where the beneﬁciary is the settlor
- Claims for support, alimony, and services provided to protect his interest
- Claims by the government.

**CHARITABLE TRUSTS** – Must have 1) “indefinite beneﬁciaries” 2) it may be perpetual, and 3) the **cy pres doctrine** applies.
**Purpose** – must benefit the public (ie. Relief of poverty, education, religion, health, etc.)

**Beneficiaries** – courts consider the community at large and a particular individual eligible for benefits has no standing to enforce the terms. Enforcement is placed upon the state attorney general.

**Cy Pres Doctrine** – When a charitable purpose selected by the settlor is impractical, if the court finds that the settlor had a general charitable purpose rather than a specific purpose to help only the named charity, it will select an alternative charity to be the beneficiary. The alternative must be “as near as possible” to the settlor’s intent.

**SUPPORT TRUST** – provides for the beneficiary’s support such as housing, food, tuition. Trustee has no right to provide for luxuries. This trust can be mandatory or discretionary.

**DISCRETIONARY TRUST** – grants trustee discretion to make distributions. Beneficiary cannot compel distribution. Court will order distribution only when there is an abuse of discretion. Trustee must follow directions given by settlor and honor settlor’s intent.

**TRUST FOR THE CARE OF AN ANIMAL** – A trust for the care of an animal alive during the settlor’s lifetime is valid. It terminates when the animal dies (if created for more than one animal, on the death of the last surviving animal).

**TOTTEN TRUST** – the name given to a bank account in the depositor’s name “as trustee” for a named beneficiary. Under such bank accounts trustee has a pass book and continues to make withdrawals during her lifetime. Beneficiary has no rights until trustee death.

**POUR OVER GIFT FROM WILL TO TRUST** – a settlor can make gifts by will to a trust, even a revocable trust, established during his lifetime. Requirements:

- Trust must be in existence before or created concurrently with the will
- Trust may be amendable or revocable
- Gift is valid even though trust unfunded during settlor’s lifetime

**HOMESTEAD PROPERTY** – If a married settlor solely owns any property that qualifies as HS, he may not make a gift of the property or transfer title by deed to the trustee unless the settlor is joined by his spouse.

**MODIFICATION AND TERMINATION OF TRUST** – A trust will AUTOMATICALLY terminate at a term specified in the instrument or when the purposes have been accomplished or unlawful, contrary to public policy, or impossible to achieve.

- A settlor can revoke or amend a trust unless it expressly states it is irrevocable.
- Trustee can terminate trust if the trust prop is less than 50K and the amt is insufficient to justify the cost of administration.
- Trust may be modified or terminated by the court upon petition from trustee or a qualified beneficiary if:
  - Modification or Termination is not inconsistent w/settlor’s purpose
  - It is in the best interests of the beneficiaries
  - Continuation would uneconomical (under 50K)
  - Modification would achieve settlor’s tax objectives
  - Reformation is necessary to correct a mistake.

**RESULTING TRUST** – arises where settlor conveyed property to a trustee under an express trust and 1) the trust was void or unenforceable or 2) the beneficiary is dead or cannot be located. A resulting trust may also apply when on failure of a charitable trust where cy pres is inapplicable. In such event, the express trust terminates and the settlor becomes the beneficiary of the resulting trust.

**CONSTRUCTIVE TRUSTS** – not really a trust but prevents unjust enrichment from wrongful conduct, such as fraud, undue influence, or breach of fiduciary duty. The trustee’s only duty is to convey the property to the person who would have owned it but for the wrongful conduct. Proof of facts necessary to establish a constructive trust must be made by CLEAR AND CONVINCING EVIDENCE.