

Training Course on Trust Law

Course Outline Based Upon

**The
Law of Trusts**

First Edition

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Course Sections of Study

Section One

Trust History

Section Two

**Definitions and
Distinctions**

Section Three

Creation of Trusts

Section Four

Trust Property

Section Five

**Trustees and
Administration**

Section Six

**Beneficiary
Trustor\Creator**

PREFACE

This training course has as its objective the following: (1) to familiarize the paralegal student with the vocabulary of trust law and (2) in the process expose the student to trust concepts. At first, it may seem somewhat complex and, therefore, some introductory comments are in order.

Trust law is unique and applicable only to English law, which we inherited, and our own American law, which built on it. While other countries and their legal systems have similar legal concepts to ours in other fields such as contracts, mortgages, and guardianships, no other legal system has analogous concepts to our own trust law.

Our trust law system has been several hundred years in development, and every year brings new changes, modifications, and applications. Early on, I was a student of Professor Scott, or "Scotty" as he was affectionately known, in a yearlong class that was exciting and unique. He was not merely a lecturer but carried on a dialogue with his students in discussing the case law. His comments and one-liners were tossed off as frequently as by a late night TV entertainer. A favorite expression of his was the caution that "the law is a seamless web."

He was making us aware that present day trust law may involve many other areas of law as well: tax, bankruptcy, security, inheritance and other disciplines. This course outline is an excellent starter but only the first step in understanding the unique concepts of trust law.

Robert N. Benson

SECTION ONE

Trust History

The first known use of a type of Trust dates back to Biblical times around the time of Abraham and before. In ancient times it was often not legal for a person of another country to do business in a country of which they were not a citizen. The USE was devised as a means to circumvent this awkward problem in commerce and trade.

(Notes)

The USE was a simple yet complex system by which one could conduct business and commerce anywhere in the world and meet the laws and restrictions that were a hindrance to commerce. It worked in the following manner. A merchant would make an agreement with another person in a foreign country to deliver him a sum of money to hold for him to use. An agent of the merchant would work with the person holding the money to purchase goods. When the agent made a deal for merchandise the person holding the money would pay for the merchandise on behalf of the merchant and arrange shipping to the country of the merchant. A reasonable compensation was arranged in advance and the USE was complete.

(Notes)

The USE lasted until the fifteenth century when the Trust was created and evolved into the current format and entity of today.
(Notes)

The Romans, under Roman law, allowed similar Trust type arrangements through the usus or usufructus or fidei commissum or bonorum possessio which were very popular with the Roman Senators and elite of the Roman Empire, but these had no connection between USE or Trust even though there were similarities or had analogy between these and the USE or Trust.
(Notes)

In Hindu law there is a device like a Trust called Benami wherein an owner of real property allows it to appear in the name of an ostensible owner with the understanding that the latter, the Benamidar, transacts all business relating to the property for the benefit of the actual owner.
(Notes)

**Scholarship has shown that a USE or Trust was not a product of civil law but were rather derived through Germanic origin.
(Notes)**

**The most important development concerning Equity was the advent and development of the Trust. This development created and developed by Englishmen from century to century of the Trust idea, in the field of jurisprudence reflected true genius.
(Notes)**

**The Trust was created and developed as an institute of great elasticity and was as elastic in general concept, because it is a device for making effective dispositions of property.
(Notes)**

No other system of law is for this purpose so flexible in nature or fact. This is what makes the Trust unique.

(Notes)

Bailment, executorships, guardianship and mortgage are all limited but the Trust is available for all kinds of purposes.

(Notes)

A Trust may be created for any purpose, which is not illegal, or against public policy. The purpose for which a Trust may be created can be as unlimited as the imagination of the creators. There are no technical rules restricting the creation of Trusts.

(Notes)

Trusts were the first and still are the only entities that put the Equity of the Trust beyond the reach of all creditors.

(Notes)

Through Trusts married women first gained economic independence by the creation of equitable separate estates.

Under common law women could not own property. This also prevented wives from claiming dower.

(Notes)

The use of Trusts evolved far beyond the effecting of family settlements. Trusts are used for a wide variety of business transactions.

(Notes)

Trusts have become the “Premier” Universal Tool available for the purposes of organization, financing, risk-shifting, credit operations, settling of disputes and liquidation of affairs. Trusts have been widely used in place of corporations, partnerships and all business formats.

(Notes)

Trusts have been extensively used in all forms of real estate transactions and anywhere the splitting of legal ownership is required.

(Notes)

Trusts have been used for security devices in the assignment for the benefit of creditors and in issuing corporate bonds secured by deeds of trust and have been an invaluable tool for voting, equipment transactions, investments, and transfers.

(Notes)

Through the employment of Trusts charitable purposes are accomplished without applying for legislature charter of incorporation, and to devote property to the purposes of unincorporated associations of social character.

(Notes)

Around the fifteenth century in England there were separate courts of law and equity and for hundreds of years thereafter. This brought on the advent of the Trust and for this reason the Trust might never have come into existence. The fact that it was essentially different from the procedures of law and was procedure in equity gave birth to its existence.

(Notes)

Judgment in action at law declares the plaintiff's rights and creates rights in the plaintiff. A decree in equity imposes duties

upon the defendant. Equity acts in *personam*. This makes it possible for one person to have the legal title to property and for another to compel him to exercise his legal rights for the other's benefit.

(Notes)

The courts of equity gave the beneficiary an interest in the property and gave him protection in the enjoyment of that interest. Therefore the beneficiary has the equitable ownership and the trustee holds the legal title. The beneficiary is not the equitable owner of the Trust property because the trustee is the owner, and this gives rise to the fact that with adverse interests the beneficiary and trustee cannot be owners of the same thing. Therefore in complete understanding of the Trust the trustee has the legal title to the subject matter of the Trust and the beneficiary has the equitable or beneficial interest in it.

(Notes)

Law and equity do not conflict in the Trust in the sense that the courts of law and courts of equity do not issue conflicting orders or declare conflicting rights.

(Notes)

Both the court of law and court of equity regard the trustee as the holder of the legal title to the Trust property and the beneficiary as the equitable and beneficial owner. This is called the System of Equitable Ownership.

(Notes)

So in the fifteenth century the interest of the beneficiary was protected against purchasers with notice of his interest of beneficiary, against heirs of the trustees, and against gratuitous transferees (usurpation by creditors).

(Notes)

History of USEs and Trusts has been broken down into four periods in history. The first period is considered to be the employment of USE and continued until the beginning of the fifteenth century. The second period continued until the actment of the Statute of Uses in the sixteenth century. The third period continued until the late seventeenth century. The fourth period continues through modern day Trusts.

(Notes)

In the first period Uses were usually used in England and Europe for temporary purposes and were employed to a considerable extent, yet were not enforced by the courts. USE depended entirely on the honorary obligations resting upon the good faith of the feoffee the cestui que uses had no legal rights, but on the other hand he was free from the burdens of ownership, which were troublesome in those times.

(Notes)

The second period began when English chancellors first undertook to enforce the USE and continued until the enactment of the Statute of Uses in 1535. For the first time feoffees (holders of property in USE) were made accountable to the King's Council and required to perform the duties and circumstances by which the USE bound them. They were required to perform their obligations under common law. The USE avoided feudal claims of overlords in those times. The overlord was usually entitled to a relief and in some cases to a heriot when a tenant died and was able to escheat the land. He was entitled to aids when his eldest son was knighted and when his eldest daughter was married. These various burdensome incidents could be avoided in part at least by conveying the land to feoffees to the USE of the tenant. There was not tenure of equitable estates. The cestui que use owed homage or fealty to no overlord. This period began to formulate the development of equity and the philosophy of equity jurisdiction.

(Notes)

The third period is considered to be the development of the law of uses and Trusts during which was enacted the Statute of Uses in 1535 and lasted for about one hundred years.

(Notes)

With the struggles of creditors and purchasers being defrauded by the USE every advantage which a tenant gained by enfeoffing others to his use involved a corresponding disadvantage to someone else like his heirs, who were disinherited in favor of younger sons or daughters or strangers, to the overlords, who were deprived of their feudal rights, above all to the Crown, which was always lord and never tenant. Henry VIII insisted that something should be done about this situation and this started the motion.

(Notes)

The Statute of Uses provided that where any person be seized of land to the use of any other person shall hence forth be seized of the same lands in such like estates as they had in use.

(Notes)

After the enactment of the Statute the USE was no longer an equitable interest to be dealt with by the court of chancery, but became a legal interest to be dealt with by the court of common law. This changed greatly the way the USE was used by many.
(Notes)

The fourth period began in the seventeenth century when it was established that it was possible to separate the beneficial interest from the legal title. It was established by the common law courts that the Statute of Uses did not apply to active Trusts.
(Notes)

It was determined in this period that the feoffee be directed to defend the property against third persons and to convey the property to the cestui que use or as he might direct and that when other further active duties was imposed upon the feoffee an active Trust was created and the Statute of Uses did not effect it.
(Notes)

With the advent of the modification of the old philosophy of uses the English chancellors of the fifteenth century rendered Trusts subtle and intricate based upon clearer conceptions of public policy and of the nature and purposes of the law. It can therefore be said that Lord Nottingham who held the Great Seal in those times, established the basis of noble, rational and uniform

systems of law where Trusts are made to answer the exigencies of families and all purposes, without producing inconvenience, fraud or private mischief which the Statute of Uses meant to avoid.

(Notes)

We therefore today have the current forms of Trusts that have evolved from uses in all areas of society and will continue to be used for legal and moral reasons throughout the years to come. Accepted by the courts, IRS, banks, financial institutions and all areas of family and business relationships throughout the entire world.

(Notes)

Over the centuries the wealthiest families in every country of the world used Trusts to manage their assets, monies and power. They have passed on estates to heirs and prevented creditors from attaching incomes and estates. Today as in yesteryear the Trust reigns supreme of all management tools for all persons in all walks of life for property and debt management.

(Notes)

From the time of the Conquests, Trusts were used as chattels and have evolved to the point today where disputes are settled and taken care of under what today we call the law of bailment or the law of contract. Fiduciaries today are under a duty to account to his principal for monies received by the Trust. Where heretofore it was rare today it is commonplace to convey chattels or money or securities in Trust for another.

(Notes)

The term Bailment implies the owner of chattel delivering it to another for the use of a third person and this term is believed to have evolved from the Trust format. However the typical Trust today is a Trust of which the subject matter is income-producing assets.

(Notes)

The equity system was involved in the American Colonies and with this equity system in America came the general acceptance of the Trust. The Trust has been recognized in America since Colonial times and evolved into an important vehicle in social and economic systems in our country.

(Notes)

The Trust was further refined in America with the acceptance and appointment of corporate trustees. In England as late as 1743 a corporation could not be a trustee. The earliest instance in America of a corporation granted power as trustee happened with Farmers' Fire Insurance & Loan Company, which was chartered in the State of New York in 1822. Since that time the power of corporations with power to administer Trusts is common.

(Notes)

With the inception of corporations as trustees in America the practice has spread to other countries and become common.

(Notes)

In America the position of trustee became professionalized and trustees are compensated, while in England the individual trustee receives no compensation for his oversight unless otherwise provided by the Trust instrument. So a profession of professional trustee was born in the United States.

(Notes)

The law of Trusts is to be found in the decisions of the courts and not in statutes. The laws that deal with Trusts are mainly dealing with specific questions, such as what are proper Trust investments. While in England the statutes are comprehensive and set standards and regulations. Some States of the United States have certain Trust regulations but none of them restrict the general purposes of Trusts. All legal Trusts of today conform to the Internal Revenue Code.

Notes:

Section One History

True or False

The first known use of a type of Trust dates back to Biblical times around the time of Abraham and before.

T___ F___

The USE was devised as a means to circumvent this awkward problem in commerce and trade.

T___ F___

The USE was a simple yet complex system by which one could conduct business and commerce anywhere in the world and meet the laws and restrictions that were a hindrance to commerce.

T___ F___

In the use of the USE an agent of a merchant would work with the person holding money to purchase goods. When the agent made a deal for merchandise the person holding the money would pay for the merchandise on behalf of the merchant and arrange shipping to the country of the merchant.

T___ F___

The USE lasted until the fourteenth century when the Trust was invented and evolved into the current document and entity of today.

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The usus or usufructus or fidei commissum or bonorum possessio that were very popular with Roman Senators and the elite of the Roman Empire were just like the USE or Trust.

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In Hindu law there is a device that is a Trust called Benami wherein a owner of real property allows it to appear in the name of an ostensible owner with the understanding that the latter, the Benamidar, shall transact all business relating to the property for the benefit of the actual owner.

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The USE or Trust was not a product of civil law but were derived through Germanic origin.

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The most important invention concerning Equity was the advent and development of the Trust. This invention was created and developed by the Germans from century to century of the Trust idea.

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The Trust was created and developed, as an institute of great elasticity and as was elastic as a general concept, because it is a device for making dispositions of property.

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No other system of law is so flexible in nature or fact as the Trust. This is what makes the Trust unique.

T___ F___

Bailment, executorships, guardianship or mortgage are all specific and are designed for all kinds of purposes.

T___ F___

A Trust may be created for any purpose, which is not illegal, or against public policy.

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Trusts were the first and still are the only entities that put the Equity of the Trust beyond the reach of all creditors.

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Under common law women could not own property.

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The use of Trusts evolved far beyond the effecting of family settlements with Trusts used for a wide variety of business transactions.

T___ F___

Trusts have been widely used in place of incorporations, partnerships and all business formats.

T___ F___

Trusts have been extensively used in all forms of real estate transactions and anywhere the splitting of legal ownership is required.

T___ F___

Trusts have rarely been used for security devices in the assignment for the benefit of creditors and in issuing corporate bonds secured by deeds of trust and have been an invaluable tool for voting, equipment transactions, investments, and transfers.

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Around the fifteenth century in England there were separate courts of law and equity and for hundreds of years thereafter. This brought on the advent of the Trust and for this reason the Trust might never have come into existence.

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The fact that the Trust was essentially different from the procedures of law and was procedure in equity gave birth to its existence.

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A decree in equity imposes duties upon the defendant. Equity acts in *personam*. This makes it possible for one person to have the legal title to property and for another to compel him to exercise his legal rights for the other's benefit.

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Therefore the beneficiary has the equitable ownership and the trustee holds the legal title. The beneficiary is not the equitable owner of the Trust property because the trustee is the owner, and this gives rise to the fact that with adverse interests the beneficiary and trustee cannot be owners of the same thing. Therefore in complete understanding of the Trust the trustee has the legal title to the subject matter of the Trust and the beneficiary has the equitable or beneficial interest in it.

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Law and equity conflict in the Trust in the sense that the courts of law and courts of equity issued no conflicting orders or declares conflicting rights.

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Both the court of law and court of equity regard the trustee as the holder of the legal title to the Trust property and the beneficiary as the equitable and beneficial owner. This is called the System of Equitable Ownership.

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The third period continued until the late seventeenth century.

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The second period began when English chancellors first undertook to enforce USE and continued until the enactment of the Statute of Uses in 1535.

T___ F___

It was established by the common law courts that the Statute of Uses did not apply to active Trusts. It was determined in this period that the feoffee be directed to defend the property against third persons and to convey the property to the cestui que use or as he might direct and that when other further active duties were imposed upon the feoffee an active Trust was created and the Statute of Uses did not effect it.

T___ F___

Today as in yesteryear the Trust reigns supreme of all management tools for all persons in all walks of life.

T___ F___

Well before the time of the Conquests, Trusts were used as chattels and have evolved to the point today where disputes are settled and taken care of under what today we call the law of Bailment or the law of contract. Fiduciaries today are under a duty to account to his principal for monies

received by the Trust. Where heretofore it was rare today it is commonplace to convey chattels or money or securities in Trust for another.

T___ F___

The Trust has been recognized in America since Colonial times and evolved into an important in social and economic systems in our country.

T___ F___

In England as late as 1743 a corporation could not be a trustee. The earliest instance in America of a corporation granted power as trustee happened with Farmers' Fire Insurance & Loan Company, which was chartered in the State of New York in 1822. Since that time the power of corporations with power to administer Trusts is common.

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In America the position of trustee became professionalized, still the trustees are not compensated, as in England the individual trustee receives no compensation for his oversight unless otherwise provided by the Trust instrument.

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Some States of the United States have certain Trust regulations but none of them restrict the general purposes of Trusts. All legal Trusts of today conform to the Internal Revenue Code.

T___ F___

The Trust was further refined in America with the acceptance and appointment of corporate trustees.

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The equity system was involved in the American Colonies and with this equity system in America came the general acceptance of the Trust.

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With the advent of the modification of the old philosophy of uses the English chancellors of the fifteenth century rendered Trusts subtle and intricate based upon clearer conceptions of public policy and of the nature and purposes of the law.

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Trusts are made to answer the exigencies of families and all purposes, without producing inconvenience, fraud or private mischief, which the Statute of Uses meant to avoid.

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In the first period Trusts were usually used in England and Europe for temporary purposes and were employed to a considerable extent yet were not enforced by the courts.

T___ F___

The USE depended entirely on the honorary obligations resting upon the good faith of the feoffee the cestui que uses had no legal rights, but on the other hand he was free from the burdens of ownership.

T___ F___

SECTION TWO

Definitions and Distinctions Basic Trust Types

Trust

Webster says: a firm belief in the honesty, reliability, etc. of another; faith; the one trusted; confident expectation, hope etc.; responsibility resulting from confidence placed in one; care; custody; something entrusted to one; faith in a buyer's ability to pay; credit; a combination of corporations to establish a monopoly; the fact of having nominal ownership of property to keep, use, or administer for another such property; to be confident; to have confidence in; to commit to a person's care; to allow to do something without misgivings; to believe; to hope; expect; to grant business credit to; relating to a trust; acting as trustee; in trust entrusted to another care.

Scott on Trusts further outlines Trust as: Shall include fiduciary relationships not only in the narrower sense, but bailment, executorships, guardianship and agency. In England the separation of courts of law and courts of equity evolved from the ancient USE. To hold in Trust is to hold but not own and use but not own and to control but not own and to be for the benefit but not owned.

A good modern definition says: Trusts are legal tools that can be used to transfer and manage property or asset. It is an ingenious device because the person who creates the trust (known as the Settlor) does not necessarily have to give up all control over that property or assets, nor does he have to relinquish the income or

benefits derived from them. It strictly depends on the form of the trust used and the needs of the people it is created to serve.

Notes:

Trust Classifications

Express Trusts

Resulting Trusts

Constructive Trusts

An Express Trust arises as a result of a manifestation of an intention to impose a duty and a court enforces the duty for the purpose of the intention of the Trust. Express Trusts can be private or charitable Trusts

A Resulting Trust arises when a court of equity compels one person to deal with the property for the benefit of another and to surrender it to another.

A Constructive Trust is not based upon the intention of the parties but is imposed by the court in the interests of justice, to redress a wrong or to prevent unjust enrichment.

In the Restatement of Trusts it was to include resulting Trusts but to leave Constructive Trusts for separate treatment in the Restatement of Restitution.

Notes:

Basic Trust Types

REVOCABLE TRUSTS are those trusts that the creator chooses to end at any time.

ASSETS PROTECTION TRUSTS are designed to protect a person's assets from claims of future creditors, these are frequently established in the U.S. and throughout the world.

CHARITABLE TRUSTS are established to benefit a particular charity or the public. These are used to avoid imposition of Federal and State estate and gift taxes.

CONSTRUCTIVE TRUSTS are trusts established by operation of law. Fraud and bankruptcy are examples where Trustees of the Court hold equitable title of property for the benefit of creditors and claimants.

EXPRESS TRUSTS are specifically created by the grantor under a trust agreement or declaration of trust.

IMPLIED TRUSTS are determined by courts where a formal declaration of trust was not made but there was an intention on the part of the property owner that the property be used for a particular purpose or go to a particular person or cause.

INTER VIVOS TRUSTS are trusts created during the lifetime of the Settlor.

IRREVOCABLE TRUSTS are trusts that cannot be altered, changed, modified, or revoked after their creation. Once the Settlor

transfers property or assets to the trust they can no longer take the property back from the trust.

LIVING TRUSTS are trusts created during the lifetime of a grantor, which can be altered, changed, modified or revoked. The creator is usually the Trustee and Beneficiary, usually with relatives as other Beneficiaries.

RESULTING TRUSTS are trusts created by operation of law, when the legal title of property is transferred, but the beneficial interest is to be enjoyed by someone other than the person who got the legal title.

SPECIAL NEEDS TRUSTS are trusts created for a person receiving government benefits in order not to disqualify the beneficiary from such government benefits.

SPENDTHRIFT TRUSTS are trust established for a Beneficiary, which does not allow the beneficiary to sell or pledge away his or her interest in the trust. Spendthrifts are beyond the reach of the Beneficiaries creditors, until such time as the trust property is distributed out of the trust and placed in the hands of the Beneficiary. In about 1994 in a case in Dallas, Texas it was ruled that the creditors of a Beneficiary could not reach the property that has been distributed to the Beneficiary. This made these Trusts the most powerful asset protection Trusts in the world.

TAX BY PASS TRUSTS are trusts created to allow one spouse to leave money to the other, while limiting the amount of Federal Estate Tax bite that would be payable on the death of the second spouse.

TESTAMENTARY TRUSTS are trusts created by the terms and conditions of a will.

TOTTEN TRUSTS are trusts created during the lifetime of the grantor by depositing money into an account at a financial institution in his or her name as the Trustee for another.

RABINICAL TRUSTS are trusts that serve as religious purposes of various kinds.

NON GRANTOR IRROVACABLE TRUSTS are trusts created by an entity other than a grantor for the purpose of charity and other business related activities.

Notes:

Trust Characteristics

- A. It has a relationship.**
- B. It is a relationship of a fiduciary character.**
- C. It is a relationship with respect to property, not one involving merely personal duties.**
- D. It involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another.**
- E. It arises as a result of a manifestation of intention to create the relationship.**

The combination of all these descriptive characteristics define the Trust as is outlined in Anglo-American law.

Notes:

Trust As A Relationship

A Trust is the whole juridical device, or legal institution. The legal relationship between the parties with respect to property which is subject matter, which includes not merely the duties of the trustee toward the beneficiary and the rest of society, but also the rights, privileges, powers, and immunities that the beneficiary has against the trustee and against all of society.

Notes:

Fiduciary Relationship

Is the relationship between the trustee and beneficiary. Included are the relationship of guardian, ward, agent, principal, attorney and client. Each member of the Trust has a fiduciary relation to the other parties. The duty to act for the benefit of the other party as to matters within the scope of the Trust. To make full disclosure to all parties. It is distinguished from a merely confidential relationship but goes beyond that to include the confidence of the parties. In a fiduciary relationship a trustee that enters into a transaction with a

beneficiary in respect of property cannot set aside his duty even if the transaction does not include Trust property.

Notes:

Trust Property Relationship

A Trust has rights and duties with respect to property; there is always some property, which is the subject matter of the Trust. The subject matter of the Trust may be land or chattels, tangible or intangible that is legal or equitable interests. A Trust is created only where property is held by one person for the benefit of another.

Notes:

Relationship Involving Equitable Duties

All duties of the trustee with respect to Trust property are equitable duties and are enforceable in a court of chancery or a court having and exercising the powers of a chancery.

Notes:

Relationship Arising From A Manifestation Of Intention

A Trust has its inception in the manifestation of the intention to create it. In the case of a express Trust that arises by act of parties and a constructive Trust by operation of law, both the legal duties which arise are imposed by law, either by intention of a Settlor to create the relation and to impose the duties of a trustee to assume the duties or the duties are imposed regardless of the existence or nonexistence of the intention. Constructive Trusts duties are imposed regardless of the existence or nonexistence of intentions. It is the manifestation of intention, which controls and not the actual intention where that differs from the manifestation of intension.

Notes:

Trust Settlor

A Settlor is one who creates a Trust whether the Trust is created inter vivos or by will. On occasion other terms are used as Grantor, Creator, or Guardian.

Notes:

Trust Property

Property held in Trust is referred to as “the Trust property”, “the Trust estate”, and “the subject matter of the Trust” and/or “the Trust res” which is an old term seldom used anymore.

Notes:

Trust Beneficiary

The beneficiary, for whom a Trust was created, was formerly commonly referred to as the “cestui que trust” and the person for whose benefit a USE was created was called the “cestui que use”. In modern times the person for whose benefit the Trust is created is called the beneficiary. The ancient terms are now history.

Notes:

Trust Terms

The terms of the Trust are set fourth in the provisions with respect to the duties and powers of the trustee and the rights of beneficiaries. When the terms of the Trust are in harmony with the

rules or policies of the law and in concert with the Internal Revenue Code the Trust is valid and enforceable.

Notes:

Distinctions Between Trust And Other Relationships

Certain other relationships resemble Trusts but are not Trusts. A USE is not a Trust and the difference is understood by considering what a USE is not. The USE passed title to a third party legally and really for the benefit of a second party and is not a Trust where the title to the material Trust is not owned by anyone. Any other relationship that does not fit the characteristics of a Trust is not a Trust.

Notes:

Trust and Bailment

While the term Trust is used sometimes in a sense to include bailment, a bailment is not a Trust. A bailee is entrusted merely with the possession of property of a chattel, the trustee holds title to

Trust property. In the case of the trustee the legal title of ownership passes to the trustee where in bailment the legal ownership is in the bailor, with the bailee having possession and not title and may or may not be for a specific purpose.

Notes:

Bank As Trustee Or Bailee

Banks are often entrusted with the possessions or property of a client but the title of the property is not vested in the bank. This relationship is one of bailment and not of Trust and the duties of the bank with relation to the property depends upon the agreement between the bank and the client. Many arrangements between the bank and the client may exist but they are not Trusts.

Notes:

Trust And Executorship

While an executor is often called a trustee the personal property of the decedent is vested in him and he is under a duty to deal with the property for the benefit of others, the relationship of an executor or

administrator and legatees and distributes is a fiduciary one. Executors are not trustees. While the idea of executorship is common to systems of law, the Trust is peculiar of the Anglo-American system. This difference is clearly defined throughout the pages of history and set in judicial records defining the relationship of the executor in relation to the decedent. While executors deal with descendants, trustees deal with beneficiaries.

Notes:

Removal And Renunciation

When a testator by will names the same person as executor and trustee the revocation of his appointment as executor will not necessarily terminate his trusteeship. However when the powers of the trustee and the terms of the will blend the two together the revocation of his appointment as executor revokes his power to act as a trustee, therefore a person named as both executor and trustee may accept one position and decline the other, unless by the will the duties are blended together.

Notes:

Liability Of Sureties

Where a person is named both executor and trustee the sureties on his bond as executor are not liable for his failure to perform the duties as the trustee. Likewise the sureties on his bond as trustee are not liable for his failure to perform his duty as executor.

Notes:

Requirement Of Unanimity

When more than one trustee is named in a Trust all trustees must act as a group with unanimity. One trustee does not have the power to transfer or otherwise deal with the trust property or any part of the estate without the consent of the others.

Notes:

Real Property

All the real property and chattels held in Trust are referred to as the corpus of Trust.

Notes:

Trust And Guardianship

When a guardian of property of a person who is incapacitated holds the property for that person he has the responsibilities of a trustee. While he is under a duty to deal with the property for the person's benefit and has a fiduciary responsibility he is not a trustee in Trust. He is entrusted with the property and management of it but does not take title to the property. Guardian powers are much narrower than that of a trustee whereas by the Trust instrument's broad powers are enjoyed by the trustee. The powers of a guardian may be fixed by law but may not reflect the terms of any written instrument.

Notes:

Trust And Agency

While an agent is in a fiduciary relationship to a principal and acts for and in behalf of the principal, and is subject to the control of the principal, trustees are not subject to the control of the beneficiaries, although they have a duty to deal with the Trust property for the benefit of the beneficiaries as set forth by the articles of the Trust and can be compelled by the beneficiaries to perform their duty. Agents do not hold title to the property of the principal. An agent has the power to subject the principal to liabilities in contract and in tort; the trustee has no such power.

Notes:

Personal Liability Of Devisee

Where property is devised charged with the payment of money to third parties the devisee might become personally liable to pay the amount of the charge. This liability depends entirely upon the language of the will. The devisee becomes personally liable and by accepting the property devised to him he impliedly agrees to pay the amount of the charge. A trustee is not personally liable to the beneficiary merely because the Trust property is insufficient for the accomplishment of the purposes of the Trust and the trustee incurs a personal liability only if he is guilty of a breach of Trust.

Notes:

Intention To Create Charge Or Trust

When an equitable charge or Trust is created it depends on the express intent of the transferor. When the creator intends to impose a duty upon the transferee to deal with the property for the benefit of a third party and gives the third party the beneficial interest in the property a Trust is created; if a testator devises land and directs the devisee to sell the land and pay the proceeds or a part of the proceeds to a third party a Trust is created. However if a testator devises land subject to the payment of certain sums of money to a third party an equitable charge but not a Trust is created. If land is devised to a person on condition that he pay a certain sum to a third party an equitable charge is created and not a Trust.

Notes:

Trust And Condition

When an owner of property conveys it to another or devises it upon condition that he deal with the property in a certain manner for the benefit of a third party this becomes a conveyance upon a condition subsequent. It can also be a conveyance in Trust but not both. Conveyance of condition subsequent is retrievable to the conveyor but conveyance to a Trust is not.

Notes:

Nature Of Interest Of Beneficiary And Creditor

Trusts involve the duty to deal as fiduciary with specific property for the benefit of another. Debt involves the personal obligation to pay a sum of money to another. The creditor can enforce his claim by judicial proceedings to reach the debtor's property and subject it to the satisfaction of the claim but until he does so he has not legal or equitable interest in the property of his debtor. Whereas in Trusts the beneficiary of a Trust has an equitable interest in the Trust property. The beneficiary of a Trust has something than the personal claim, which a creditor has against his debtor. The beneficiary is the equitable owner of the Trust property; there is a fiduciary relationship between the trustee and the beneficiary and not between the beneficiary as debtor and a creditor as such. Therefore the trustee is under no obligation and cannot be compelled to pay the debt of the beneficiary. The interest of the beneficiary in the Trust property is out of reach of any creditor and may never be touched by the creditor.

Notes:

Accidental Loss

If money held in Trust is lost by accident without any fault on the part of the trustee he is under no liability to the beneficiary.

Notes:

Effect Of Insolvency

If money is held in Trust and the trustee becomes insolvent the beneficiary is entitled to the money if it is identified in the hands of the trustee or it can be traced into a product. It is not shared or claimed by the creditors of the trustee. Therefore any moneys owed by the insolvent trustee may not be paid from the Trust and the Trust may not obligate to pay the debts of the trustee.

Notes:

Bank Deposits

(If all other definitions and distinctions are forgotten remember this one above all others).

A distinction between a Trust and a debt is shown in the cases where money is deposited in banks that become insolvent and fail. In ordinary general deposits the relation between the bank and the depositor is that of a debtor and creditor and if the bank fails the depositor is not entitled to priority over the other creditors of the bank. However when money or property is deposited with a bank with instructions to hold in it separate and apart from the other property of the bank, in such case the bank is not a debtor but becomes a trustee or a bailee. Where normal money is deposited with a bank the bank becomes a debtor and subject to a mere personal liability to the depositor, even in cases where the

transaction does not amount to a general deposit since it is not to be drawn against by check in the usual way. In such cases the depositor is not entitled to priority over any other creditors on the failure of the bank. However if the bank becomes a trustee or bailee and subsequently becomes insolvent or fails, the depositor is entitled to priority over creditors of the bank if he can point out the property deposited or traces it into a product. (Deposit slips, bankbooks, receipts and etc.). Also if the bank obtains a deposit by fraud the bank becomes a constructive trustee of all money deposited, but only if the depositor can trace (through the documents mentioned above) his money into the assets of the bank.

Notes:

Stockbrokers

A distinction must be made and articles in place in dealing with stockbrokers or brokerage firms. If the broker acts for the Trust an arrangement between the Trust and the broker and brokerage firm must be in place or the broker could and may use the money to purchase securities for the Trust or use the money as his own for investments. When a Trust places securities with a stockbroker on the Trust account and the broker sells them it depends on the

arrangement between the broker and the Trust whether the broker holds the securities or the proceeds from them if sold or whether he can use them as his own becoming a debtor to the customer.

Notes:

Novation-Substitution Of Debt For Trust

When through agreement between the trustee and beneficiary a novation is agreed to the trustee ceases to be a trustee and becomes a debtor to the Trust. An example of this is where commercial paper is deposited with a bank for collection and credit to the account of the depositor. The bank at the beginning is a trustee of the paper and after collection it mingles the proceeds of the paper with its own money and becomes a debtor. This arrangement requires an agreement between the trustee and the beneficiaries of the Trust.

Notes:

Novation-Substitution Of Trust For Debt

When a creditor agrees with a debtor for the debtor to hold property in Trust for the creditor and that the debt shall be thereby cancelled this is a novation and is effected whereby the parties remain the same the debtor takes the place of the creditor. The novation may be made before or after the creation of the debt. No Trust is created unless the debtor sets aside property to be held by the creditor.

Notes:

Trust And Contract To Convey Land

Where a contract for the purchase and sale of land is enforceable, the purchaser is held to acquire an equitable interest in land before it is conveyed to him. It can be said, therefore, that the seller, prior to the conveyance, is a trustee for the purchaser. This is not a Trust in that the relation between buyer and seller is different than between a trustee and beneficiary in that the seller is not in a fiduciary relation to the purchaser and the seller is under no duty to make full disclosure to the buyer. Trustees cannot transfer property to another person subject to the Trust since he is under a duty not to delegate Trust property however the seller can properly sell his interest subject to the contract with the buyer.

Notes:

Trust And Contract For Benefit Of Third Parties

Trusts are distinguished from a contracts for the benefit of third parties. Whether a Trust results from a contract for the benefit of third parties depends upon whether there is property held by one person for the benefit of third parties or a simple undertaking to make payment to the third parties.

Notes:

Promisor As Trustee

When a person transfers property to another person who agrees to hold it or deal with the property for the benefit of a third party a Trust is created. If the person transferring the property to the second person and that person agrees to sell the property and to pay the proceeds or a certain amount of the proceeds to the third party, the second person then holds the property in Trust for the third party. However when a person conveys property to a second person as consideration for his promise to pay a certain sum to the third party out of his general assets, where the second person is not bound to use the property for the benefit of the third party but can use it for his own purposes in this case no Trust is created and there is a contract for the benefit of a third party.

Notes:

Promisee As Trustee

Whether or not a person receiving the money or other property undertakes to hold it or deal with it for the benefit of the third party, or whether he is under a merely personal liability to the third party determines this distinction.

Notes:

Consequences Of The Distinction Between Trust And Contract

In America, beneficiaries of a contract as well as beneficiaries of a Trust have rights, which are enforceable by law so the distinction is not always important. In England, however, distinction between contract and Trust is of vital importance. The English courts hold that persons who are not party to a contract cannot enforce it. This basic concept is usually important when a person entrusted with money or other property becomes insolvent, if he holds in Trust the beneficiaries are entitled to priority over the general creditors. Major differences exist between the consequences, which flow from a Trust, and those that flow from a contract for benefit of third parties. Trustees are in a fiduciary relation to beneficiaries of Trusts and there is no fiduciary relation in contract for the benefit of third parties between the Promisor and the third parties.

Notes:

Trust And Assignment Of A Chose In Action

Assignors like trustees have the legal right under the terms of assignment the assignee like the beneficiaries of a Trust have the beneficial interest in it. When choses in action first became assignable the interest of the assignee like that of the beneficiaries of a Trust was equitable. Therefore, the right of assignee to sue at law in his own name for the assignor is established in law. The assignor is under no active duty to the assignee his only duty being not to interfere with the assignee's enforcing the chose in action. The trustee is under an obligation and an affirmative duty in a chose action to enforce it for the beneficiaries and to hold the proceeds in Trust for the beneficiaries.

Notes:

Trust And Partial Assignment Of A Chose In Action

In a partial assignment of a chose in action the result is that a relation between the assignor and assignee becomes nearly like a Trust, but is not one. The assignee of a part of a claim unlike an assignee of the entire claim cannot maintain an action at law against the obligor. He can maintain a suit joining the partial assignor and the obligor as defendants and thus recover from the obligor his share of the claim. In a chose in action where a Trust holds the equity the beneficiaries can maintain a suit in equity joining the obligor and trustee as parties but only if the trustee refuses to

enforce the claim. After making partial assignment the assignor collects the whole amount of the claim from the debtor he holds the proceeds pro tanto for the benefit of the partial assignee.

Notes:

Section Two

True or false

The Characteristics of a Trust are: It has a relationship. It is a relationship of a fiduciary character. It is a relationship with respect to property, not one involving merely personal duties. It involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another. It arises as a result of a manifestation of intention to create the relationship. The combination of all these descriptive characteristics define the Trust as is outlined in Anglo-American law.

T___ F___

A Trust is the whole juridical device, or legal institution, the legal relationship between the parties with respect to property which is subject matter, which includes only the duties of the trustee toward the beneficiary and the rest of society, but also the rights, privileges, powers, and immunities that the beneficiary has against the trustee and against all of society.

T___ F___

Each member of the Trust has a fiduciary relation to the other parties. The duty to act for the benefit of the other party as to matters within the scope of the Trust. To make full disclosure to all parties. It is distinguished from a merely confidential relationship but goes beyond that to include the confidence of the parties.

T___ F___

The subject matter of the Trust may be land or chattels, tangible or intangible, and are legal or equitable interests. A Trust is created only where one person for the benefit of another holds property.

T___ F___

All duties of the trustee with respect to Trust property are equitable duties and are enforceable in a court of chancery or a court having and exercising the powers of a chancery.

T___ F___

A Trust has its inception in the manifestation of the intention to create it.

T___ F___

A Settlor is one who creates a Trust whether the Trust is created inter vivos or by will.

T___ F___

A Grantor is one who creates a Trust whether the Trust is created inter vivos or by will.

T___ F___

A Creator is one who creates a Trust whether the Trust is created inter vivos or by will.

T___ F___

Property held in Trust is referred to as "the Trust property", "the Trust estate", "the subject matter of the Trust", and/or "the Trust res".

T___ F___

The entity, for which a Trust is created, commonly referred to as the "cestui que trust" and the person for whose benefit a USE was created was called the "cestui que use".

T___ F___

The person for whose benefit the Trust is created is called the Trustee
T___ F___

The term "cestui que trust" designates that it is a Trust and not a contract.
T___ F___

The terms and conditions of the Trust are the terms and conditions that the trustee makes in the provisions with respect to the duties and powers of the trustee and the rights of beneficiaries.
T___ F___

A USE is a Trust and the difference is understood only by considering what a USE is not.
T___ F___

Any other relationship that does not fit the characteristics of a Trust is not a Trust.
T___ F___

A bailee is entrusted merely with the possession of property of a chattel, where the trustee holds title to Trust property.
T___ F___

In the case of the trustee the legal title of ownership passes to the trustee wherein Bailment the legal ownership is in the bailor, with the bailee having possession and not title and may or may not be for a specific purpose.
T___ F___

Banks are often entrusted with the possessions or property of a client but the title of the property is not vested in the bank.

This relationship is one of Bailment and not of Trust.

T___ F___

Executors are not trustees.

T___ F___

While executors deal with beneficiaries, trustees deal with decedents.

T___ F___

When a testator by will names the same person as executor and trustee the revocation of his appointment as executor will not necessarily terminate his trusteeship.

T___ F___

Where a person is named both executor and trustee the sureties on his bond as executor are liable for his failure to perform the duties as the trustee. Likewise the sureties on his bond as trustee are liable for his failure to perform his duty as executor

T___ F___

When more than one trustee is named in a Trust all trustees must act as a group with unanimity. One trustee does not have the power to transfer or otherwise deal with the trust property or any part of the estate without the consent of the others.

T___ F___

All real property and chattels are held in Trust pertaining to the corpus of Trust.

T___ F___

When a guardian of property of a person who is incapacitated holds the property for that person he is a trustee. While he is under a duty to deal with the property for the person's benefit and has a fiduciary responsibility he is not a

trustee in Trust. He is entrusted with the property and management of it but does not take title to the property.

T___ F___

Guardian powers are much broader than that of a trustee whereas by the Trust instrument broad powers are enjoyed by the trustee as well. The powers of a guardian are not fixed by law and do not depend upon the terms of any written instrument.

T___ F___

While an agent is in fiduciary to a principal and act for and in behalf of the principal and is subject to the control of the principal, trustees are not subject to the control of the beneficiaries, although he has a duty to deal with the Trust property for the benefit of the beneficiaries as set forth by the articles of the Trust and can be compelled by the beneficiaries to perform his duty. Agents do not hold title to the property of the principal, an agent has the power to subject the principal to liabilities in contract and in tort; the trustee has no such power.

T___ F___

Where property is devised charged with the payment of money to third parties the devisee might become personally liable to pay the amount of the charge. This liability depends entirely upon the language of the will. The devisee becomes personally liable by accepting the property devised to him he impliedly agrees to pay the amount of the charge. A trustee is not personally liable to the beneficiary merely because the Trust property is insufficient for the accomplishment of the purposes of the Trust and the trustee incurs a personal liability only if he is guilty of a breach of Trust.

T___ F___

A Trust is not a Trust where the equitable charge, does not involve a fiduciary relation.

T___ F___

When the creator of a Trust intends to impose duty upon the transferee to deal with the property for the benefit of a third party and gives the third party the beneficial interest in the property a Trust is created and if a testator devises land and directs the devisee to sell the land and pay the proceeds or a part of the proceeds to a third party a Trust is created.

T___ F___

When a testator devises land subject to the payment of certain sums of money to a third party or pays a third party an equitable charge a Trust is created.

T___ F___

If land is devised to a person on condition that he pay a certain sum to a third party an equitable charge is created.

T___ F___

When an owner of property conveys it to another or devises it upon condition that he deals with the property in a certain manner for the benefit of a third party this becomes a conveyance upon a condition subsequent.

T___ F___

Conveyance of condition subsequent is retrievable to the conveyor but conveyance to a Trust is not.

T___ F___

Debt involves the personal obligation to pay a sum of money to another. The creditor can enforce his claim by judicial proceedings to reach the debtor's property and subject it to the satisfaction of the claim but until

he does so he has not legal or equitable interest in the property of his debtor.

T___ F___

While an agent is in fiduciary to a principal and act for and in behalf of the principal and is subject to the control of the principal, trustees are not subject to the control of the beneficiaries, although he has a duty to deal with the Trust property for the benefit of the beneficiaries as set fourth by the articles of the Trust and can be compelled by the beneficiaries to perform his duty. Agents do not hold title to the property of the principal, an agent has the power to subject the principal to liabilities in contrast and in tort; the trustee has no such power.

T___ F___

In Trusts the beneficiary of a Trust has an equitable interest in the Trust property. The beneficiary of a Trust something more that a mere chose in action, something more than the personal claim which a creditor has against his debtor. The beneficiary is the equitable owner of the Trust property; there is a fiduciary relationship between the trust and the beneficiary and not between the beneficiary as debtor and creditor as such. Therefore the trustee is under no obligation and cannot be compelled to pay the debt of the beneficiary. The interest of the beneficiary in the Trust property is therefore out of reach of any creditor and may never be touched by the creditor.

T___ F___

If money held in Trust is lost by accident without any fault on the part of the trustee he is under liability to the beneficiary.

T___ F___

If money is held in Trust and the trustee becomes insolvent the beneficiary is entitled to the money if it is identified in the hands of the

trustee or it can be traced into a product. It is not shared claimed by the creditors of the trustee.

T___ F___

If the bank obtains a deposit by fraud the bank becomes a constructive trustee of all money deposited, but only if the depositor can trace (through the documents mentioned above) his money into the assets of the bank.

T___ F___

If a broker acts for the Trust an arrangement between the Trust and the broker and brokerage firm must be in place or the broker could and may use the money to purchase securities for the Trust or use the money as his own for investments.

T___ F___

Through an agreement between the trustee and beneficiary a novation is agreed to, the trustee ceases to be a trustee and becomes a debtor to the Trust.

T___ F___

A novation arrangement requires an agreement between the trustee and the Settlor of the Trust.

T___ F___

When a creditor agrees with a debtor for the debtor to hold property in Trust for the creditor and that the debt shall be thereby cancelled this is a novation and is effected whereby the parties remain the same the debtor takes the place of the creditor.

T___ F___

It can be said therefore that the seller prior to the conveyance is a trustee for the purchaser. This is not a Trust in that the relation between buyer

and seller is different than between a trustee and beneficiary in that the seller is not in a fiduciary relation to the purchaser and the seller is under no duty to make full disclosure to the buyer.

T___ F___

Trustees can transfer property to another person subject to the Trust because he is under a duty to delegate Trust property however the seller can properly sell his interest subject to the contract with the buyer.

T___ F___

Whether it is a Trust or a contract for the benefit of third parties depends upon whether there is property held by one person for the benefit of third parties or a simple undertaking to make payment to the third parties.

T___ F___

When a person transfers property to another person who agrees to hold it or deal with the property for the benefit of a third party a Trust is created.

T___ F___

When a person conveys property to a second person as consideration for his promise to pay a certain sum to the third party out of his general assets, where the second person is not bound to use the property for the benefit of the third party but can use it for his own purposes in this case a Trust is created and there is a contract for the benefit of a third party.

T___ F___

Whether or not a person receiving the money or other property undertakes to hold it or deal with it for the benefit of the third party, or whether he is under a merely personal liability to the third party determines this distinction.

T___ F___

In America beneficiaries of a contract as well as beneficiaries of a Trust have rights, which are enforceable by law so distinction is not always important.

T___ F___

In England the *distinction* between contract and Trust is of vital importance.

T___ F___

Major differences *exist* between the consequences, which flow from a Trust, and those that flow from a contract for benefit of third parties.

T___ F___

Trustees are fiduciary relations to beneficiaries of Trusts and there is a fiduciary relation in contract for the benefit of third parties between the Promisor and the third parties.

T___ F___

When choses in action first became assignable the interest of the assignee like that of the beneficiaries of a Trust was equitable.

T___ F___

A trustee is under obligation and an affirmative duty in a chose action to enforce it for the beneficiaries and to hold the proceeds in Trust for the beneficiaries.

T___ F___

In a partial assignment of a chose in action the result is that a relation between the assignor and assignee becomes nearly like a _____ but is not one.

T___ F___

In a chose in action where a Trust holds the equity the beneficiaries can maintain a suit in equity joining the obligor and trustee as parties but only if the trustee refuses to enforce the claim.

T___ F___

Section Two

Definitions and Distinctions

In this Section of the Examination match the number of the Definition or Distinction with the Name of the type of Trust. Definitions or Distinctions are on the following pages.

TRUSTS _____

EXPRESS TRUSTS _____

RESULTING TRUSTS _____

CONSTRUCTIVE TRUSTS _____

RECOVABLE TRUSTS _____

TESTAMENTARY TRUSTS _____

ASSET PROTECTION TRUSTS _____

CHARITABLE TRUSTS _____

TAX BY PASS TRUSTS _____

CONSTRUCTIVE TRUSTS _____

NON GRANTOR IRROVACABLE TRUSTS _____

INPLIED TRUSTS _____

TOTTEN TRUSTS _____

RABINICAL TRUSTS _____

INTER VIVOS TRUSTS _____

IRREVOCABLE TRUSTS _____

LIVING TRUSTS _____

SPECIAL NEEDS TRUST _____

SPENDTHRIFT TRUSTS _____

1.

Trusts established for a Beneficiary, which does not allow the beneficiary to sell or pledge away his or her interest in the trust. Spendthrifts are not subject to turn over orders of courts and are beyond the reach of the Beneficiaries creditors, until such time as the trust property is distributed out of the trust and placed in the hands of the Beneficiary.

2.

Trusts created for a person receiving government benefits in order not to disqualify the beneficiary from such government benefits.

3.

Trusts created by operation of law, when the legal title of property is transferred, but the beneficial interest is to be enjoyed by someone other than the person who got the legal title. A good example is the way states get and use roadside parks and make other parks for public uses.

4. Trusts that cannot be altered, changed, modified or revoked after its creation. Once the creator transfers property or assets to the trust they can no longer take the property back from the trust. These are the only Trusts that are beyond the reach of creditors or claims.
5. Trusts created during the lifetime of a grantor, which can be altered, changed, modified or revoked. The creator is the Trustee and Beneficiary usually with relatives as other Beneficiaries.
6. Trusts determined by courts where a formal declaration of trust was not made but there was an intention on the part of the property owner that the property be used for a particular purpose or go to a particular person or cause.
7. Trusts created during the lifetime of the creator. These Trusts can be revocable or irrevocable at the desire of the creator of the Trust.
8. Trusts specifically created by the grantor under a trust agreement or declaration of trust.
9. Trusts established by operation of law.

10.
Trusts established to benefit a particular charity or the public.
11.
Trusts designed to protect a person's assets from claims of future creditors, frequently established in the U.S. and through out the world.
12.
Trusts that the creator chooses to end at any time.
13.
Trusts created to allow one spouse to leave money to the other, while limiting the amount of Federal Estate Tax bite that would be payable on the death of the second spouse.
14.
Trusts created by the terms and conditions of a will.
15.
Trusts created during the lifetime of the grantor by depositing money into an account at a financial institution in his or her name as the Trustee for another.
16.
Trusts that serve as religious purposes of various kinds.
17.
Trusts created by an entity other than a grantor for the purpose of charity and other business related activities. These are very cumbersome and long and very expensive.

18.

Legal tools that can be used to transfer and manage property or asset. It is an ingenious device because the person who creates the trust (known as the Settlor) does not necessarily have to give up all control over that property or assets, nor do they have to relinquish the income or benefits derived from them.

SECTION THREE

CREATION OF TRUSTS

Methods Of Creating A Trust

The most common way a Trust is created is by a transfer of property to another person as a trustee while the Settlor is alive (inter vivos) or by will. This can be for creating a Trust by conveyance inter vivos for a third party or for the Settlor or for both the Settlor and third parties. Such a type of Trust is usually created in America inter vivos for the benefit of the Settlor himself for his lifetime and the remainder to others on his death. These Trusts are known as living Trusts. When a Trust is created by a will the testator who is the creator of the Trust must outline the terms of the Trust in the will. The terms of the Trust are outlined in the instrument of conveyance. A Trust may be created by both transfer inter vivos or by will, or through a declaration made by the owner of property to hold in Trust. Exercise of power of appointment can also create a Trust. A Trust is created through the making of enforceable promises to a second party as trustee accomplished by the transfer of the subject property.

Notes:

Declaration Of Trust

A Trust is created by declaration of Trust. A Trust can be created without the simultaneous transfer of property. Owners of property may through declaration of Trust make themselves trustee of property for the benefit of others. When the Settlor receives no compensation for declaring the Trust the Trust is nevertheless a valid Trust. No transfer of property is necessary for the creation of this type of Trust since the purpose is that the Settlor himself will continue to hold the property, which is not to his benefit, but for the benefit of others. Through the manifestation of intention to create such a Trust the Trust declaration is made subject to the legal compliance to the Statute of Frauds or is in substance a testamentary disposition under the Statute of Wills. A Trust is created through the execution of an instrument declaring that the person creating the Trust holds the property to himself in trust. Therefore manifestation of intention through declaration forms a Trust.

Notes:

Exercise Of Power Of Appointment

Persons having no title to property but have the power over the property by appointment can appoint the property to a trustee rather than to the party they wish to benefit. This appointment

power must be by deed or will. Through the appointment of a trustee they become the Settlers of the Trust. By this manner, by special appointment the donor of the power and not the donee is the Settlor of the Trust.

Notes:

Promise In Trust

Trusts are created when one person makes a promise to another as a trustee. The promise is binding only if an instrument evidences it. Therefore, where a person gives consideration to a second party for a promise made by the second party to the first party to be trustee for a third party a Trust is the result.

Notes:

By Declaration of Trust

Any owner of property has the capacity to create a Trust by declaring himself a trustee of the property for the benefit of another, if he has capacity to transfer the property. The courts have ruled that there are not special rules for the capacity to create a Trust as

long as the legal rules, which are applicable to analogous transactions, are followed.

Notes:

By Transfer inter vivos In Trust

Any person having the ability to purchase property has the power to create a Trust by buying the property in the name of another as trustee for the benefit of another.

Notes:

By Transfer Of Will In Trust

Any owner of property that has the capacity to bequeath the property can create a Trust by will if the terms of Trust are specified in the will. No special court rules are established as to capacity to create a Trust by will.

Notes:

By Exercise Of Power Of Appointment

Through special power of appointment a person though not the owner of property can create a Trust, even if they are not the owner of the property if a power of appointment over the property is given them by the owner whether general or special. A donee of the power of appointment must have the power of appointment and the capacity to appoint upon Trust.

Notes:

By Making A Promise In Trust

A Trust is created by a promise made by a person to a third party and held in Trust by a trustee or second party. The person must have the ability to bind himself or herself by a promise made to another as a trustee.

Notes:

Requirement Of Manifestation Of Intention

A Trust is created only if the Settlor properly manifests an intention to create a Trust. Such an outward expression is properly exhibited through written or spoken words or by conduct.

Notes:

Mode Of Manifestation Of Intention

Particular forms or words or conduct are not necessary for manifestation of intention to create a Trust. Sufficient manifestation exists where an owner of property transfers it to another with a direction to transfer it to or hold it or deal with it for the benefit of third parties.

Notes:

Trust And Successive Legal Estates

Successive legal estates are created when property is devised or bequeathed for the benefit of more than one person in succession and is determined by the testator whether the property is to be held in Trust for them or whether they take successive estates.

Notes:

Communication Of Intention

Trusts can be created without a Settlor's intention being communicated to a beneficiary through an undisclosed intention where he has expressed the intention to create such a Trust in the undisclosed intention. The Settlor must manifest his intentions by outward acts or written intention. There is no rule of law stating that communication to anyone be given in the creation of a Trust.

Notes:

Precatory Words

These are words of desire used in a bequest instead of words of command, which are precatory rather than mandatory words.

Vague words leave the devisee or legatee in a state of undetermined decision.

Notes:

Family Purposes

Property may be placed in Trust for the benefit of the Settlor and his family. The expressed intention determines whether a Trust is created or whether the property is given to them absolutely.

Therefore if a person places property in Trust to a trustee for the benefit of himself or his family by manifestation of intention and the property passes to the trustee by legal deed in Trust a family Trust is the result.

Notes:

Charitable Purposes

A charitable Trust results when a person through manifestation of intention and declaration of Trust provides that an absolute transfer

of ownership to the Trust for the benefit of charitable causes and a relative of the Settlor has no power to benefit from the Trust but that the property be applied only to charitable causes.

Notes:

No Intention To Create A Present Trust

No Trust is created by an owner of property through an intention to create a Trust in the future. Any promise to create a Trust in the future by the transfer of property to a trustee at a future date or by appointing themselves, as a trustee does not form a Trust.

Notes:

Postponement Of Enjoyment

A Trust that is created and the benefit of the Trust is withheld from the beneficiaries for a period of time is a postponement of enjoyment of beneficial interest. A Settlor may create a Trust and retain the

income from property and other means for his lifetime, only passing the income to the beneficiaries at his death or at the expiration of some predetermined time. At the time of the transfer of property to a trustee the Trust is created.

Notes:

Where Some Of The Elements Of Trust Are Determined In The Future

No Trust can be created or be valid unless the elements of the Trust are determined and present leaving nothing to be determined at a future date. Where terms of the Trust are to be determined by the Settlor at a later date no Trust arises before the terms and conditions of the Trust are determined even though the intentions of the Settlor are to create a Trust.

Notes:

After-Acquired Property

No Trust can be created by transfer of property, which is not owned by the Settlor at the time the Trust is created. No transfer can be

Page 77

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made by promise or the rights of a Promisee under a contract to create a Trust. The property must be owned and the Settlor has the right to transfer the property to form a Trust.

Notes:

Promisee As Trustee

A promise to create a Trust at a future time is not the creation of a present Trust, however a present Trust may be created of the rights of a Promisee under a contract. When a person makes a promise to a trustee for the benefit of a beneficiary if the promise is binding with consideration, the trustee immediately becomes trustee for the beneficiary of the consideration transferred by the Settlor.

Notes:

Whether Trust Subsequently Arises

When a person promises to transfer property to a trustee at a future time the Trust does not arise until the Settlor make the transfer of the rights to receive the property through contract. This is a binding obligation on behalf of the Settlor when the right to receive

the property by a contract executed by the Settlor to purchase the property is delivered to a trustee for the benefit of a beneficiary.

Notes:

Consideration For Declaration Of Trust

The owner of personal property whether tangible or intangible can declare himself trustee of the property for the benefit of another even if no consideration is paid for the declaration of Trust. Since the property is not an interest in land and not testamentary in character no formalities are required for a declaration of Trust.

Notes:

Gratuitous Declaration Of Trust Of Land

This is where land or property is conveyed to a Trust without a deed, without the formalities necessary for a sale but the legal title remains with the Settlor. It has been upheld by courts of law that the owner of the property gratuitously declares himself trustee of the property for the benefit of beneficiaries that the Trust is enforceable in equity.

Notes:

Consideration For Promise To Create A Trust

A promise to create a Trust is binding as a contract only if it is made for consideration or under seal. A promise to create a future Trust is not enforceable unless the requirements for the formation of a contract are complied with.

Notes:

Conveyance inter vivos To A Person For His Own Benefit

When a person has intention to make an outright gift to another the transaction to make the outright gift does not involve the creation of a Trust. If the gift is effective the donee takes the legal and beneficial interest in the property, which is subject matter of the gift. The courts generally refuse to torture an imperfect gift into a declaration of Trust. (Second National Bank v. Curie 116 N. J. Eq. 101, 172 Atl. 560 1934). The law as to gifts in the case of chattel that a gift is ineffective unless the chattel is delivered to the donee or to a third party for him, or unless a deed of gift or possibly a writing evidencing the gift although not under seal is delivered. If the chattel is in the possession of the donee no further act of deliver is

necessary. If the chattel is in a locked receptacle, the delivery of the key is sufficient. If the owner of a chattel or chose in action manifests an intention to make a gift but does not deliver it or deliver a deed of gift or other instrument evidencing the gift the gift is incomplete. Therefore when property tangible or intangible is placed in Trust for the benefit of a beneficiary no gift can result by this action because not document exists or implies delivery of the gift to the beneficiary.

Notes:

Purposes For Which A Trust Can Be Created

Since the Trust is the most flexible judicial device in the legal system its chief advantages is that it can be created generally for any purpose and subject to such provisions as the Settlor chooses. The intention of the Settlor as set forth in the Trust instrument is the trustee's charter. The intention of the Settlor is the governing factors of Trusts. Only affirmative public policy restricts the creation of Trusts. Trusts are not like other juridical instruments having restrictions of an arbitrary or artificial character, which are due to historical background. Trusts can be created for any reason or purpose, which is not against public policy or otherwise illegal in

any manner. So any provision in the terms of a Trust that are valid and legal is a legal and properly created Trust.

Notes:

Section Three

True and False

The most common way a Trust is created is by a transfer of property to another person as a trustee, by a transfer through inter vivos or by will.

T ___ F ___

When a Trust is created by a will the testator who is the creator of the Trust must outline the terms of the Trust in the will The terms of the Trust are outlined in the instrument of conveyance.

T ___ F ___

A Trust may be created by both transfer inter vivos (by will) or through a declaration made by the owner of property to hold in Trust.

T ___ F ___

Exercise of power of appointment cannot create a Trust.

T ___ F ___

A Trust is created through the making of enforceable promises to a second party as trustee.

T ___ F ___

A Trust is created by declaration of Trust.

T ___ F ___

A Trust cannot be created without the transfer of property.

T ___ F ___

When the Settlor receives compensation for declaring the

Trust, the Trust is a valid Trust.

T ___ F ___

Through the manifestation of intention to create such a Trust the Trust declaration is made subject to the legal compliance to the Statute of Frauds or is in substance a testamentary disposition under the Statute of Wills.

T ___ F ___

A Trust is created through the execution of an instrument declaring that the person creating the Trust holds the property to himself in trust.

T ___ F ___

The manifestation of intention through declaration forms a Trust.

T ___ F ___

Persons having no title to property but has the power over the property by appointment can appoint the property to a trustee rather than to the party they wish to benefit.

T ___ F ___

Trusts are created when one person makes a promise to another as a trustee in which the promise holds in Trust their rights as promise.

T ___ F ___

Where a person gives consideration to a second party for a promise made by the second party to the first party to be trustee for a third party a Trust is the result.

T ___ F ___

Any owner of property has the capacity to create a Trust by declaring himself a trustee of the property for the benefit of another, if he has capacity to transfer the property.

T ___ F ___

The courts ruled that there are special rules for the capacity to create a Trust.

T ___ F ___

Any person having the ability to purchase property has the power to create a Trust by buying the property in the name of another as trustee for the benefit of another.

T ___ F ___

Any owner of property that has the capacity to bequeath the property can create a Trust by will if the terms of Trust are devised in the will. Special court rules are established as to capacity to create a Trust by will.

T ___ F ___

Through special power of appointment a person, though not the owner of property, can create a Trust, even if they are not the owner of the property if, a power of appointment over the property is given them by the owner whether general or special

T ___ F ___

A Trust is created herein by a promise made by a person to a third party and held in Trust by a trustee or second party. The person must have the ability to bind themselves by a promise made to another as a trustee.

T ___ F ___

If there is an outward expression of intention an express Trust is created only if the Settlor properly manifests an intention to create Trust.

T ___ F ___

Outward expression is not properly manifested only through written or spoken words or by conduct.

T ___ F ___

Particular forms or words or conduct are necessary for manifestation of intention to create a Trust.

T ___ F ___

Sufficient manifestation exists where an owner of property transfers it to another with a direction to transfer it to or hold it or deal with it for the benefit of third parties.

T ___ F ___

Successive legal estates are created when property is devised or bequeathed for the benefit of more than one person in succession and is determined by the testator whether the property is to be held in Trust for them or whether they take successive estates.

T ___ F ___

Trusts can be created without a Settlor's intention being communicated to a beneficiary through an undisclosed intention where there is a manifestation of intention to create a Trust in the undisclosed intention.

T ___ F ___

The Settlor must manifest his intentions by outward acts or written intention. There is a rule of law stating that communication must be given in the creation of a Trust.

T ___ F ___

Precatory are words that leave the devisee or legatee in a state of undetermined decision.

T ___ F ___

Outward expression is not properly manifested only through written or spoken words or by conduct.

T ___ F ___

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T ___ F ___

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T ___ F ___

Precatory are words that leave the devisee or legatee in a state of undetermined decision.

T ___ F ___

The manifestation of intention determines whether a Trust is created or whether the property is given to them absolutely.

T ___ F ___

A charitable Trust results when a person through manifestation of intention and declaration of Trust provides that an absolute transfer of ownership to the Trust for the benefit of charitable causes and a relative of the Settlor has no power to benefit from the Trust but that the property be applied only to charitable causes.

T ___ F ___

A Trust is created by an owner of property through an intention to create a Trust in the future.

T ___ F ___

Any promise to create a Trust in the future by the transfer of property to a trustee at a future date or by appointing themselves, as a trustee does not form a Trust.

T ___ F ___

A Trust that is created and the benefit of the Trust are withheld from the beneficiaries for a period of time is a postponement of enjoyment of beneficial interest.

T ___ F ___

A Settlor may not create a Trust and retain the income from property and other means for his lifetime, only passing the income to the beneficiaries at his death or at the expiration of some predetermined time.

T ___ F ___

At the time of the transfer of property to a trustee the Trust the Trust is created.

T ___ F ___

A Trust can be created and is valid with the elements of the Trust being determined at a future date.

T ___ F ___

Where terms of the Trust are to be determined by the Settlor at a later date no Trust arises before the terms and conditions of the Trust are determined even though the intentions of the Settlor are to create a Trust.

T ___ F ___

Transfer of property, which is not owned by the Settlor at the time the Trust is created, can create no Trust. Promise or the rights of a Promisee under a contract to create a Trust can make no transfer. The property

must be owned and the Settlor has the right to transfer the property to form a Trust.

T ___ F ___

A promise to create a Trust at a future time is not the creation of a present Trust, however a present Trust may be created of the rights of a Promisee under a contract.

T ___ F ___

When a person makes a promise to a trustee for the benefit of a beneficiary if the promise is binding with consideration and under seal, the trustee immediately becomes trustee for the beneficiary of the claim against the Settlor.

T ___ F ___

When a person promises to transfer property to a trustee at a future time the Trust does not arise until the Settlor makes the transfer of the rights to receive the property through contract.

T ___ F ___

A promise to create a Trust is binding as a contract only if it is made for consideration or under seal.

T ___ F ___

The owner of personal property whether tangible or intangible can declare himself trustee of the property for the benefit of another even if no consideration is paid for the declaration of Trust. Since the property is not an interest in land and not testamentary in character no formalities are required for a declaration of Trust.

T ___ F ___

It has not been upheld by courts of law that the owner of the property gratuitously declares himself trustee of the property for the benefit of beneficiaries that the Trust is enforceable in equity.

T ___ F ___

A promise to create a future Trust is not enforceable unless the requirements for the formation of a contract are complied with.

T ___ F ___

When a person has intention to make an outright gift to another the transaction to make the outright gift does not involve the creation of a Trust.

T ___ F ___

The law as to gifts in the case of chattel is held that a gift is ineffective unless the chattel is delivered to the donee or to a third party for him, or unless a deed of gift or possibly a writing evidencing the gift although not under seal is delivered. If the chattel is in the possession of the donee no further act of deliver is necessary.

T ___ F ___

When property tangible or intangible is placed in Trust for the benefit of a beneficiary no gift can result by this action because not document exists or implies delivery of the gift to the beneficiary.

T ___ F ___

Since the Trust is the most flexible juridical devices in the legal system its chief advantages is that it can be created for any purpose and subject to such provisions as the Settlor chooses.

T ___ F ___

The intention of the Settlor is the as set fourth in the Trust instrument is the trustee's charter and the intention of the Settlor is the governing factors of Trusts.

T ___ F ___

Trusts are not like other juridical instruments having restrictions of an arbitrary or artificial character, which are due to historical background. Trusts can be created for any reason or purpose, which is not against public policy or otherwise illegal in any manner.

T ___ F ___

Any provision in the terms of a Trust that are valid and legal is a legal and properly created Trust.

T ___ F ___

SECTION FOUR

The Trust Property

The Necessity Of Trust Property

The creation of a Trust is a method of disposing of property, tangible or intangible. Through the creation of a Trust the Settlor transfers to and effectuates a complete separation of interest in the property of the Trust giving the beneficiaries the equitable interest without the legal title.

This is very important where the creditors of beneficiaries gain judgments against them. Owing to the fact that the legal title of the property never passes to the beneficiaries the property is out of the reach of the creditors of the beneficiaries.

Notes:

What Can Be Held In Trust

Any property tangible or intangible may be held in Trust. However certain interests, which someone has, are not property and cannot be placed in a Trust. Examples would be the interest in freedom from harmful bodily contact or the interest in the right to bear arms and the interest of a parent in a child, which cannot be disposed of as property. Some examples of intangible property would be a

copyright, a seat on a stock exchange or a membership in a board of trade, which can be conveyed to a Trust.

Notes:

Where The Trust Property Ceases To Exist

Since a Trust is not created without some Trust property either tangible or intangible, if the Trust property ceases to exist (the original Trust property and all products of it) the trustee has nothing to hold in Trust with legal title which the beneficiaries have the beneficial interest in, therefore the Trust is no longer a viable Trust. However, while a Trust cannot be created without Trust property in a character acceptable to a Trust the Trust is not terminated when there is no longer property in Trust. The Trust is simply not an operating Trust but the fiduciary relation continues although it ceases to be a relation in respect to specific property.

Notes:

Intention That Property Be Held In Trust

Even when a Settlor has property that he wishes to place in Trust, no Trust is created unless he manifests an intention that the property be held in Trust.

Notes:

Non-Existent Interests

Nonexistent interests cannot be placed or declared to be in Trust. Only existing interests can be conveyed to a Trust at its inception.

Notes:

Indefinite Subject Matter

All subject matter to create a Trust must be specifically ascertainable at the time of the creation of the Trust.

Notes:

Transferable Property

Property, which an owner can sell or transfer by gift, can be transferred to a Trust. Any subject matter, tangible, intangible, land, chattels or chose in action or other intangible things may also be transferred to a Trust.

Notes:

Non-Transferable Property

The owner of property who can not transfer the property absolutely cannot transfer the property to a Trust.

Notes:

Limited Transferability

Interest that must be held by a particular class or group must have the interest transferred to Trust in favor of beneficiaries strictly within that class or group.

Notes:

Insurance Policies

Life insurance policies that are payable to an estate can be assigned to a Trust or another person in a Trust.

Notes:

Patents and Copyrights

Persons who obtain patents or copyrights for inventions or literary works can transfer their interest either absolutely or in part to Trusts. Similarly contracts to assign patents are likewise transferable.

Notes:

Good Will And Trademarks

An identifiable business asset is its good will and when the business is in Trust the good will is subject to the Trust and trustees are accountable for it. Trademarks are also assets of the business and can be held in Trust.

Notes:

Trade Secrets

Trade secrets are part of Trust property, therefore, a secret process employed in a business may be held in Trust in connection with a Trust of the Business.

Notes:

Future Earnings

Rights under a contract or employment in existence at the time of an assignment can be effectively assigned to a Trust.

Notes:

Future Crops And Unborn Young Animals

The owner of land is treated as having a present interest in the future crops to be raised on the land. The owner of the land or animals has a future interest in the young, which may be born to these animals, and his interest can be assigned to a Trust.

Notes:

Personal Property

The trustee of the Trust must accept the entire legal interest in all personal property of a Trust such as, chattels, securities and other personal properties.

Notes:

Section Four

Read the statements that follow and state whether you Agree or Disagree with the statements.

The creation of a Trust is a method of disposing of property, tangible or intangible. Through the creation of a Trust the Settlor effectuates a complete separation of their interest in the subject matter of the Trust giving the beneficiaries the equitable interest without the legal title.
Agree ____ Disagree ____

Owing to the fact that the title of the property passes to the beneficiaries the property is out of the reach of the creditors of the beneficiaries.
Agree ____ Disagree ____

Any property tangible or intangible may be held in Trust. However certain interests, which someone has, are not property and cannot be placed in a Trust.
Agree ____ Disagree ____

The interest in freedom from harmful bodily contact or the interest in the right to bear arms and the interest of a parent in a child, are all property that can be held in Trust.
Agree ____ Disagree ____

A copyright, a seat on a stock exchange or a membership in a board of trade, is property, which cannot be conveyed to a Trust.
Agree ____ Disagree ____

Even when a Settlor has property that he wishes to place in

Trust, no Trust is created unless he manifests an intention that the property be held in Trust.

Agree ____ Disagree ____

Nonexistent interests can be placed or declared to be in Trust.

Agree ____ Disagree ____

Only real property that is conveyed to a trustee for Trust can be conveyed to a Trust.

Agree ____ Disagree ____

All subject matter to create a Trust must be definite or definitely ascertainable for facts existing at the time of the creation of the Trust.

Agree ____ Disagree ____

Property, which an owner can sell or transfer by gift, cannot be transferred to a Trust.

Agree ____ Disagree ____

Any subject matter, tangible, intangible, land, chattels or chose in action or other intangible things can be transferred to a Trust.

Agree ____ Disagree ____

The owner of property who cannot transfer the property absolutely cannot transfer the property to a Trust.

Agree ____ Disagree ____

Interest that must be held by a particular class or group must have the interest transferred to Trust in favor of beneficiaries strictly within that class or group.

Agree ____ Disagree ____

Life insurance policies that are payable to an estate cannot be assigned to a Trust or another person in a Trust.

Agree ____ Disagree ____

Persons who obtain patents or copyrights for inventions or literary works cannot transfer their interest either absolutely or in part to Trusts.

Agree ____ Disagree ____

A actual business assert is its good will and when the business is in Trust the good will is subject to the Trust and trustees are accountable for it.

Agree ____ Disagree ____

Trademarks are also assets of the business and cannot be held in Trust.

Agree ____ Disagree ____

It is held that trade secrets are not part of Trust property therefore a secret process employed in a business may not be held in Trust in connection with a Trust of the Business.

Agree ____ Disagree ____

The owner of land is treated as having a present interest in the future crops to be raised on the land, and that the owner of the land or animals has future interest in the young which may be born to these animals and his interest can be assigned to a Trust.

Agree ____ Disagree ____

Rights under a contract or employment in existence at the time of an assignment cannot be effectively assigned to a Trust.

Agree _____ Disagree _____

SECTION FIVE

The Trustees

Capacity Of A Natural Person To Be Trustee

An Individual must meet legal standards to serve as a trustee of a Trust. These standards or capacities are:

- 1. The capacity to take title to property for his own benefit.**
- 2. The capacity to continue to hold property for his own benefit.**
- 3. The capacity to deal with property if owned by him beneficially.**

Notes:

Capacity To Administer

Any natural person who has capacity to administer a Trust should be able to perform the duties imposed upon him in the administration of a Trust.

Notes:

Duty Of A Trustee

When a person accepts the position of trustee of a Trust he is under a duty to administer the Trust for as long as he holds the position of trustee. Once he has accepted the position as trustee of the Trust he can never disclaim. The only way a trustee can resign is by the terms provided in the Trust document. Since the

duty to administer the Trust is not contractual, the fact that the trustee receives no consideration is not material to his duty of administration of the Trust. The duty of the trustee to administer the Trust continues until the Trust ends, the trustee dies, is removed or resigns according to the terms of the Trust.

Notes:

Trustee As Fiduciary

The duty of a trustee of loyalty to a Trust is one of the most serious fiduciary relationships in existence. While other fiduciaries like partners, directors, officers, guardians, executors or administrators are all serious positions the fiduciary relation of a trustee is above them. The trustee owes complete loyalty to the beneficiaries of the Trust, and the trustee may not place himself in a position where he benefits from the Trust and violates his duty to the beneficiaries of the Trust. The trustee has a fiduciary duty to disclose all material facts of transactions and actions of the Trust to the beneficiaries in all cases including information that would be detrimental to the trustee and advantageous to the beneficiaries.

Notes:

Trustee Control Of Property

A trustee of a Trust must take control of Trust property and take all actions and steps necessary to secure control of and keep secure the property of the Trust. The trustee must take physical control of the property and designate the property as Trust property. The trustee should record deeds and mortgages of Trusts. The trustee must keep control of the Trust property at all times. Possession may be entrusted by the trustee to banks and security firms in a Trust account, but he should keep physical possession of property and not entrust the possession to others. The trustee must take care to protect the property of the Trust from damage, theft or unlawful acts of third parties. This is a very serious duty of the trustee. In the past trustees have been held liable for inaction of security to Trust property and held subject to surcharges by courts.

Notes:

Duty Of Trustee To Act

When trustees of Trusts fail to act to enforce claims for the benefit of a Trust, where the steps are reasonable, the trustee can be subject to surcharges by the courts. The trustee is under a duty to enforce claims on behalf of the beneficiaries of the Trust and to take reasonable steps to enforce claims. When a debtor of the Trust fails to pay the Trust what is legally due And payable to the Trust the trustee is obligated to bring an action to

enforce payment of the debt. The trustee must make decisions as to what are reasonable methods of protecting the Trust estate. Sometimes a security would be a proper situation instead of a legal action, giving the Trust an investment and protecting the Trust estate. When a claim is not collectable or cannot be collected in full and it appears reasonable to the trustee that the claim cannot be collected in full or it is doubtful that the claim is enforceable then the trustee is justified in compromising the claim or resorting to arbitration to resolve the claim.

Notes:

Trustee To Defend

The trustee must defend actions of third parties against the Trust estate. The duty of the trustee to defend actions against the Trust is a fiduciary obligation to the beneficiaries to prevent the impairment of the Trust. When beneficiaries sue for the enforcement of a Trust the trustee is not permitted to set up defects in the Settlor's title even if he could.

Notes:

Trust Property To Be Separate

The property of the Trust must be kept separate from the property of the trustee and other properties and must be properly designated as property of the Trust. The duty of the trustee is to keep the Trust property separate from the property of other Trusts, to keep the Trust property separate and isolated as property of the Trust, and to designate Trust property as Trust property. Trustees in violation of these principles and duties are held accountable and are subject to liability by the courts. A trustee must not commingle Trust funds with his own funds, or Trust property with his own property but must keep Trust property and funds separate to maintain the identity as that of Trust estate. Funds of separate Trusts must not be mingled for the same reason that it could lose its identity. Trustees may not mingle the property of several Trusts even if the beneficiaries are benefited from the mingling of the properties and are fairly compensated. The trustee must hold property separate in the separate Trusts and not commingle.

Notes:

Title Must Be Held By Trusts

Trustees may not take title to trust property in his individual name, even though he does not mingle the property with his own. If a trustee deposits monies of the Trust in a bank in his

name or personal account or cashes a check payable to the Trust, the trustee commits a breach of Trust. Whenever the terms of the trust permit the trustee to hold title and property in his name for the Trust no breach of Trust occurs. The manifestation of intention of the Trust and what is in the terms and condition of the Trust is the governing power of the trustee in relation to this circumstance.

Notes:

Trust Property Clearly Defined

A breach of Trust occurs when a trustee takes title to Trust property in his own name or the name of a third party whether or not the character of the property is disclosed to the beneficiaries. The exception to this is if the manifestation of intention of the Trust permits such an act and what is in the terms and conditions of the Trust. In such a case the trustee must show in the Trust records clearly the ownership of the property by the trustee and the facts regarding holding it in the name of the trustee. If the property is held by a nominee (third party) a signed statement shall be deposited with the trustee showing the Trust ownership of the property and the trustee shall be personally liable for any loss to the Trust resulting from any act of such nominee in connection with the property held.

These principals and regulations are applicable to all trustees, and Trust institutions.

Notes:

Loans Must Be For Security Or Interest

Trust funds may not be loaned without adequate security. A deposit in a bank is a loan to a bank of the amount of the money deposited. It is permitted for a trustee to preserve the Trust funds in a bank deposit account which has a small amount of security on the account (FDIC Insurance) rather than keeping the funds in cash and employing the proper measure of security required to protect the funds. A deposit is not an investment but is safekeeping. If the trustee assures the account insurance and/or bailee agreement and the bank fails the trustee incurs no liability for his actions. Trustees commit a breach of trust when they fail to use reasonable care in selection of a bank, fails to earmark the deposit as made by him as a trustee, leaves the funds on deposit for an unreasonably long period of time, or the trustee makes an arrangement with the bank which precludes him from withdrawing the funds at anytime. Even where time

deposits are made the Trust funds must be liquid and the time deposit liquidated if the business of the Trust demands it.

Notes:

Trust Funds Must Be Invested

The trustee must invest trust funds so that they will be productive. To take an undo time to invest Trust funds for investment is a breach of Trust. Where other types of property and land are to be used or let to be productive it should be in compliance with the Settlor who created the Trust. If rental property or land is leased by a trustee and the trustee allows a tenant to fail to pay the rent due the Trust for a considerable period the trustee is subject to surcharge by the courts.

Notes:

Duty Of The Trustee To Pay

It is the duty of the trustee to disburse to the beneficiary of the Trust on a regular basis, all net incomes of the Trust, after deducting from the gross income the expenses properly incurred in administration of the Trust. All income of a Trust may be

taxable income when earned through the investment of the corpus of the Trust and may be subject to additional taxation if not distributed in the year in which it was earned. When the beneficiary is legally incapacitated and is entitled to a benefit of the Trust the trustee is under duty to pay the income of the beneficiary to the guardian or to a court. When the trustee applies the income to the support of the beneficiary the account is credited and shown as a disbursement to the beneficiary. Trustees are under a duty to deal impartially with the beneficiaries of a Trust. Only when the terms and condition of the Trust allow the trustee to deal with favor to another beneficiary is the trustee allowed to show any partiality between beneficiaries.

Notes:

Trustees Must Participate

All trustees of a Trust must participate in the administration of the Trust. Trustees may not delegate to a third party the duties or acts, which he is reasonably required to perform, and may not delegate his acts or duties to his fellow co-trustees. Inactive trustees are guilty of breach of Trust. It is the duty of all of the trustees to prevent the others from committing a breach of Trust.

Notes:

Terms And Conditions Provide Control

According to the terms and conditions of a Trust it can be provided that the actions of the trustees in certain respects will be subject to the control of another entity. A co-trustee, co-beneficiary or the Settlor or a third party unconnected with the Trust can hold this power, which is conferred upon this entity by the provisions of the Trust instrument. This power may compel certain actions by the trustees, may be applies to remove trustees and appoint others. If the power is reserved to the Settlor of the Trust by the Settlor may or may not hold the power of control of the administration of the Trust or solely for his own benefit. The holder of the power cannot be controlled in the exercise of this power unless he is guilty of an abuse of discretion or threatens to abuse the power conferred upon him.

Notes:

Married Women

Under English common law, a married woman at common law not being sui juris was incapable of administering a Trust. Married women at common law could not individually and apart from her husband make conveyances or contracts or maintain an action at law or suit in equity. Since law thus restricted her she could not serve as a trustee of a Trust. Since the prior restrictions of married women have been removed by statute married women can now serve as a trustee of a Trust.

Notes:

Infants

Infants have the capacity to take and hold property either beneficially or in Trust, however that may not serve as a trustee of a Trust since their contracts and conveyances are voidable.

Notes:

Insane Persons

Insane parties have the capacity to take title to property when conveyed to them beneficially in Trust, however they have no capacity to administer the Trust and may not serve as a Trustee.

Notes:

Aliens

In common law aliens could not take title to land by descent. This has been changed and if the alien meets the capacity tests of the trustee they may serve as a trustee of a Trust.

Notes:

Non-Residents

Non-residents of a state in which a Trust is created and where it will be administered may serve as a trustee of a Trust. However in some States when a resident trustee moves to another State, this may be grounds for removal as a trustee. A non-resident trustee in some States in a testamentary Trust is required to appoint a resident as his agent for the service of process in proceedings brought against him as trustee.

Notes:

United States Or A State

The United States can hold property in Trust. An example would be Indian land held in Trust by the government. States also can hold property in Trust.

Notes:

Corporations

Corporations may serve as a trustee of a Trust in certain kind of Trusts. Corporate trustees are subject to many regulations that are inapplicable to individual trustees.

Notes:

Trust Companies and Banks

Federal and State banks are under certain administrative details in regulations of federal banks, which are different from those governing state institutions. These regulation are complex and do not concern private Trusts.

Notes:

Foreign Corporations

A corporation can administer a Trust in one State where the corporation is organized under the laws of another State or a foreign country.

Notes:

Unincorporated Associations

When the members of an association are sufficiently definite the title of property may be vested in them as trustees, they by the same manner can administer the Trust as individual co-trustees.

Notes:

Partnerships

Members of the partnership must hold the legal title to property and the members must serve as trustees. Partnerships are not considered as an entity, which can have capacity to take or hold title to property.

Notes:

Beneficiary As Trustee

Since the creation of a Trust involves the separation of legal and equitable interests in property, where one person, the beneficiary serves as trustee he holds the entire beneficial interest and there is no Trust.

Notes:

Where The Sole Beneficiary Is Not The Sole Trustee

When the unusual circumstance arises of several trustees or several beneficiaries the Trust is valid even though one or more of the trustees are also beneficiaries of the Trust. Difficulties arise in this circumstance and are considered in matters of law and enforcement. These are very unusual circumstances not encountered commonly.

Notes:

The Settlor As Trustee

When a person gratuitously declares that they hold property in Trust for certain beneficiaries he is the Settlor of the Trust and also the trustee of the Trust. Trusts that are created by a Settlor who declares himself trustee for his own sole benefit are not legal Trusts. The Trust is not a legal Trust not because the Settlor is trustee but because the trustee is the sole beneficiary. Trusts where the Settlor and trustee are one of two or more beneficiaries are valid Trusts.

Notes:

Failure of Trustee

When a trustee dies, becomes insane or subject to some legal incapacity or resigns or is removed the trustee fails but not the Trust as a new trustee is appointed.

Notes:

Powers Of Trustees **Powers Of The Trustee As Outlined In A Trust** **Powers of Trustee**

In addition to all other powers and discretions granted to or vested in trustee by law or by this instrument, trustee shall have the following powers and discretions, to be exercised only in a fiduciary capacity, primarily in the interest of those beneficiaries who are at any given time entitled to the income from the trust estate:

- A. **General Powers.** To do all such acts, take all such proceedings and exercise all such rights and privileges in the management of the trust estate as if he were the absolute owner thereof, including, without limiting the generality of the terms, the following:
- (1) **Power of Sale.** To hold, manage, operate, control, repair, preserve, improve, partition, divide, subdivide, sell (at public or private sale and for cash or on credit), convey, exchange, convert, grant options on, or otherwise deal with trust property:
 - (2) **Power To Lease.** To lease for terms either within or beyond duration of this trust, properties, including oil, gas and other mineral interests, on such terms as trustee may deem proper; and to enter into pooling, unitization, repressurization,

- community and other types of agreements relating to the development, operation and conservation of mineral properties;
- (3) Power To Loan and Invest. To loan, reloan, invest and reinvest the trust estate or any part thereof;
 - (4) Power To Manage Securities. To vote stock, give proxies, pay calls for assessments, sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers, liquidations, pooling agreements and voting trusts, assent to corporate sales and other acts and, in connection therewith, to deposit securities with and transfer title to any protective or other committee under such terms as trustee may deem advisable;
 - (5) Power To Hold Securities in Name of Nominee. To hold securities or other property in trustee's own name or in the name of trustee's nominee, without disclosing any fiduciary relation;
 - (6) Power to Insure. To procure and carry, at the expense of the trust, estate insurance of such kind and in such form and amount as trustee deems advisable to protect trustee and the trust estate against any hazard;
 - (7) Power To Borrow Money and Hypothecate Trust Assets. To borrow money for any trust purpose, hypothecate the trust estate or any part thereof and replace, renew and extend any encumbrance thereon, on such terms, conditions and security as may be determined by the trustee and to pay loans or other obligations of the trust estate, as trustee, in trustee's discretion, deems advisable.

- B. Power to Retain Trust Property. Trustee, in trustee's discretion, is expressly authorized to hold and retain any securities, properties, or other investments for such length of time, as trustee deems advisable.
- C. Investment Powers. In investing, reinvesting, purchasing, acquiring, exchanging and selling property for the benefit of this trust, trustee shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, and stocks, preferred or common, which persons of prudence, discretion and intelligence acquire for their own account.
- D. Power To Determine Principal and Income. Unless otherwise specifically provided herein, trustee, in trustee's discretion, may determine what is principal or income and what shall be charged or credited to either. Trustee's judgment shall bind everyone beneficially interested hereunder. Trustee may rely on the statement of the paying corporation as to whether dividends are paid from profits or earnings or are a return of capital or a distribution of assets, and as to any other fact relevant hereunder concerning the source or character of dividends or distributions of corporate assets.
- E. Power To Compromise Claims. Trustee may, at trustee's option, at any time, in connection with trustee's management of the trust

- estate or the collection of any moneys due or payable to trustee as trustee hereunder, compromise or abandon any claims existing in favor of or against the trust estate.
- F. **Distribution or Division in Kind.** On any division of the trust estate into separate shares or trusts and upon any distribution, trustee may apportion and allocate the assets of the trust estate in cash, or in kind, or partly in cash and partly in kind, or in undivided interests, in such manner as trustee, in trustee's discretion, deems advisable. Trustee may sell such property, as trustee deems necessary to make any such division or distribution. After any division of the trust estate, the trustee may make joint investment with funds from some or all of the several shares or trusts.
- G. **Termination in Trustee's Discretion.** If the trust, in the absolute discretion of trustee, becomes sufficiently small in value that the administration thereof is no longer economically desirable, the cost thereof is disproportionate to the value of the assets, or the continuation thereof is no longer in the best interest of the beneficiary or beneficiaries, trustee may terminate such trust. On termination as herein provided, trustee shall distribute the property of such trust to the person or persons, then entitled to receive the income therefrom, in such shares as the trustee, in his sole discretion, shall determine to be in the best interests of the beneficiaries.
- H. **Trustee's Discretion.** All discretions granted to or vested in trustee by any provision of this instrument are to be exercised in the sole and absolute discretion of trustee. However, no such discretion shall be exercised other than in a fiduciary capacity, primarily in the interests of the beneficiaries.

I. Limitations on Trustee's Powers. Notwithstanding any other provision of this trust instrument, no power exercisable by trustee shall be construed so as to enable trustee, Settlor, or any other person to purchase, exchange, or otherwise deal with or dispose of the corpus or income therefrom for less than an adequate consideration in money or money's worth or to enable Settlor to borrow the corpus or income, directly or indirectly, without adequate interest or security. No person other than trustee acting in a fiduciary capacity shall have the power to vote or direct the voting of stock or other securities, to control the investment of trust funds either by directing investments or reinvestments, or to permit any person to reacquire the trust corpus by substituting other property of an equivalent value.

Section Five

The statements that follow have words missing in the statement, fill in the correct word or words that make the sentence complete and correct.

A trustee must meet the _____ standards to serve as a trustee of a Trust. These standards or capacities are:

1. The capacity to take title to property for his own benefit can take the title to property in Trust.
2. The capacity to continue to hold property for his own benefit has capacity to hold property in _____.
3. The capacity to deal with _____ if owned by him beneficially has capacity to administer property in Trust.

Any _____ person who has capacity to administer a Trust depends on whether he has capacity to exercise powers conferred upon him and to perform the duties imposed upon him in the _____ of a Trust.

When a trustee accepts the position of trustee of a Trust he is under a _____ to administer the Trust for as long as he holds the position of trustee. Once they have accepted the position as trustee of the Trust they can never disclaim. The only way a trustee can resign is by the _____ provided in the Trust document. Since the duty to administer the Trust is not contractual, the fact that the trustee receives no consideration it that is the case is not material to his duty of _____ of the Trust. The duty of the trustee to administer the Trust continues until the Trust ends, the trustee dies, are removed or they _____ according to the terms of the Trust.

The duty of a trustee of _____ to a Trust is one of the most serious fiduciary relationships in existence. While other fiduciaries like partners, directors, officers, guardians, executors or administrators are all serious positions the _____ relation of a trustee is above them. The trustee owes complete loyalty to the beneficiaries of the Trust, and the trustee may not place himself in a position where he _____ from the Trust and violates his duty to the beneficiaries of the Trust. The trustee has a fiduciary duty to disclose all material facts of _____ and actions of the Trust to the beneficiaries in all cases up to and including information that would be detrimental to the trustee and advantageous to the beneficiaries.

A trustee of a Trust must _____ of Trust property and take all actions and steps necessary to secure control of and keep _____ the property of the Trust. The trustee must take physical control of the property and designate the property as _____. The trustee should record deeds and mortgages of Trusts. The trustee must also keep control of the Trust property at all times. Possession may be entrusted by the trustee to banks and security firms in a _____, where securities are concerned but he should keep possession of property and not entrust the possession to others. The trustee must take care to _____ the property of the Trust from damage, theft or unlawful acts of third parties. This is a very serious duty of the trustee to protect Trust property, for in the past trustees have been held liable for inaction of _____ to Trust property and held subject to surcharges by courts.

When trustees of Trusts fail to act to _____ for the benefit of a Trust, where the steps are reasonable, the trustee can be subject to _____ by the courts. The trustee is under duty to enforce claims on behalf of the beneficiaries of the Trust and to take _____ steps to enforce claims, which the trustee holds in Trust. When a debtor of the Trust fails to pay the Trust that is legally due And payable to the Trust the trustee is obligated to bring an _____ to enforce payment of the debt. The trustee must make decisions as to what are reasonable methods of protecting the Trust estate. Sometimes a security would be a proper situation instead of a legal action, giving the Trust an investment and protecting the Trust estate. When a claim is not collectable or cannot be collected in full and it appears _____ to the trustee that the claim cannot be collected in full or it is doubtful that the claim is enforceable then the trustee is _____ in compromising the claim or resorting to arbitration to resolve the claim.

The trustee must 1 _____ of third parties against the Trust estate. The duty of the trustee to _____ actions against the Trust is _____ to the beneficiaries to prevent the destruction of the Trust. When beneficiaries sue for the _____ of a Trust the trustee is not permitted to set up defects in the Settlor's title even if he could.

The _____ of the Trust must b kept separate from the _____ of the trustee and other properties and must be

properly designated as property of the Trust. The duty of the trustee is to keep the Trust property _____ from the property of other Trusts, to keep the Trust property separate and isolated as property of the Trust, and to _____ Trust property as Trust property. Trustees in violation of these principles and duties are held accountable and are subject to _____ by the courts. A trustee must not mingle Trust funds with his own funds, or Trust property with his own property but must keep Trust property and funds _____ to maintain the identity as that of Trust estate. Funds of separate Trust must not be mingled for the same reason that it could lose its identity. Trusts may not mingle the property of several Trusts even if the _____ are benefited from the mingling of the properties and are fairly compensated. The trustee must hold property separate in the separate Trusts and not commingle.

Trustees may _____ title to trust property in his individual name, even though he does not mingle the property with his own. If a trustee deposits monies of the Trust in a bank in his name or personal account or cashes a check payable to the Trust, the trustee commits a _____ of Trust. Whenever the terms of the trust permit the trustee to hold title and property in his name for the Trust no breach of Trust occurs. The manifestation of intention of the Trust and what is in the terms and condition of the Trust is the _____ power of the trustee in relation to this circumstance.

A _____ of Trust occurs wherein a trustee takes title to Trust property in his own name or the name of a third party whether the

character of the property is disclosed to the beneficiaries. The _____
_____ to this is if the manifestation of intention of the Trust permit
such act and what is in the terms and conditions of the Trust. In such
a case the trustee must show in the Trust records _____ the _
_____ of the property by the trustee and the facts regarding
holding it in the name of the trustee. If the property is held by a _____
_____ (third party) a signed statement shall be deposited with
the trustee showing the Trust ownership of the property and the
trustee shall be personally liable for any _____ to the Trust
resulting from any act of such nominee in connection with the
property held. These principals and regulations are held to all
trustees, applicable to individual trustees as well as Trust _____.

When Trust funds are _____ they may not be _____
without security. A _____ in a bank is a loan to a bank of the
amount of the money _____. It is permitted for a
trustee to preserve the Trust funds in a bank deposit account which
has a small amount of security on the account (FDIC Insurance)
rather than keeping the funds in cash and employing the proper _____
_____ required additional taxation if not distributed
in the year in which it was earned. When the beneficiary is an _____
_____ or is legally incapacitated and is entitled to a benefit of the
Trust the trustee is under duty to pay the income of the beneficiary
to their guardians or to a court. When the trustee applies the income
to the support of the beneficiary the account is credited and shown
as a _____ to the beneficiary. Trustees are under a duty to deal
impartially with the beneficiaries of a Trust. Only when the terms
and condition of the Trust allow the trustee to deal with favor to

another _____ is the trustee allowed to show any partiality between beneficiaries.

All trustees of a Trust must _____ in the _____ of the Trust. Trustees may not _____ to a third party the duties or acts, which he is reasonably required to perform, and may not delegate his acts or duties to his fellow co-trustees. _____ trustees are guilty of breach of Trust. It is the duty of all of the trustees to prevent the others from committing a breach of Trust.

According to the terms and conditions of a Trust it can be provided that the _____ of the trustees in certain respects will be subject to the _____ of another entity. A co-trustee, co-beneficiary or the _____ or a third party unconnected with the Trust can hold this power, which is conferred upon this entity by the _____ of the Trust instrument. This power may compel certain actions by the trustees, can remove trustees and appoint others in their stead, remove beneficiaries and replace them with others, and is one of _____ and not for his benefit. If the power is reserved to the _____ of the Trust the _____ may or may not hold the power of control of the administration of the Trust or solely for his own benefit. The holder of the _____ cannot be controlled in the exercise of this power unless he is guilty of an abuse of discretion or threatens to abuse the power conferred upon him.

Under _____ common law a married woman at common law not being sui juris was incapable of _____ a Trust. Married women at common law could not apart from _____ make conveyances or contracts or maintain an action at law or suit in equity. Since law thus restricted her she could not serve as a _____ of a Trust. Since the circumstances of married women have been removed by statute married women can now serve as a _____ of a Trust.

_____ have the capacity to take and hold property either beneficially or in Trust, however that may not serve as a trustee of a Trust since their contracts and conveyances are voidable.

_____ parties have the capacity to take title to property when conveyed to them beneficially in Trust, however they have no capacity to administer the Trust and may not serve as a Trustee.

In common law _____ could not take title to land by descent. This has been changed and if the alien meets the capacity tests of the trustee they may serve as a trustee of a Trust.

_____ of a state in which a Trust is created and where it will be administered may serve as a trustee of a Trust. However in some States when a resident trustee moves to another State may be grounds for _____ as a trustee. A nonresident trustee in some States in a testamentary Trust is required to appoint a _____ as his agent for the service of process in proceedings brought against him as trustee.

The _____ can hold property in Trust¹ An example would be Indian land held in Trust by the government. _____ also can hold property in Trust.

_____ may serve as a trustee of a Trust in certain kind of Trusts. _____ trustees are subject to many regulations that are inapplicable to individual trustees.

_____ and State banks are under certain administrative details in regulations of federal banks, which are different from those governing state institutions. These _____ are complex and do not concern private Trusts.

A _____ can administer a Trust in one State where the _____ is organized under the laws of another State or a foreign country.

When the members of an _____ are sufficiently definite the title of property may be vested in them as trustees, they by the same manner can _____ the Trust as individual Co-trustees.

Members of the _____ must hold the legal title to property and the members must serve as trustees. _____ are not considered as an entity, which can have capacity to take or hold title to property.

Since the creation of a Trust involves the separation of legal and equitable interests in property, where one person, if the _____ serves as trustee they hold the whole beneficial interest and there is no Trust.

When the unusual circumstance arises of several trustees or several _____ the Trust is valid even though one or more of the trustees are also _____ of the Trust. Difficulties arise in this circumstance and are considered in matters of law and enforcement. These are very unusual circumstances not encountered commonly.

When a person _____ declares that they hold property in Trust for certain beneficiaries they are the _____ of the Trust and are the trustee of the Trust. Trusts that are created by a _____ that declares himself trustee for his own sole benefit are not legal Trusts. The Trust is not a legal Trust not because the _____ is trustee but because the trustee is the sole beneficiary. Trusts where the _____ and trustee are one of two or more beneficiaries are valid Trusts.

When a trustee dies, becomes _____ or subject to some _____ incapacity or resigns or is removed the trustee fails but not the Trust as a new trustee is appointed.

SECTION SIX

Beneficiary

Definite Beneficiary Necessary

A Trust cannot be created in favor of a person who is not sufficiently identified as a beneficiary of the Trust. Trusts can be created for beneficiaries that are not specifically named by the Trust at the time of creation but who can be determined from existing facts at the time the Trust is created. An example would be a person leaving his estate to a Trust that stipulates the beneficiaries to be the caretakers of his/her property, the caretakers being ascertained as the beneficiaries at the time of the creation of the Trust. Trusts can therefore be created where the beneficiaries are referred to as partners of the creator, servants, caretakers, or persons in employ of the creator or others designated in whatever manner the creator of the Trust elects to name the beneficiaries. Unborn children can be named, for it is not necessary that beneficiaries of a Trust should be in existence at the time of the formation of the Trust. As the unborn children can become beneficiaries of a Trust, it can be created in favor of a corporation or company not yet organized. These non-existent entities may be named as beneficiaries as long as they are formed or come into existence within the period of the rule against perpetuities. Trusts cannot be formed for deceased persons or entities that do not come into existence.

Notes:

The Settlor As Beneficiary

A Settlor of a Trust may be the sole beneficiary or one of many beneficiaries. The owner of a property will transfer it to a trustee in Trust and the owner will receive the income off of the property for his lifetime and on his death the property is conveyed to other beneficiaries. This type of Trust is usually called a Living Trust. A major disadvantage of this type of Trust construction is that a beneficial interest created and reserved to the Settlor of the Trust can be alienated or reached by his creditors even if the Trust construction stipulates otherwise in the terms.

Notes:

Trustee As Beneficiary

It is possible in a Trust creation for the Settlor to appoint one of the beneficiaries as trustee of the Trust. A sole trustee may never be the sole beneficiary of a Trust. This type of a Trust construction is not recommended.

Notes:

Capacity To Be Beneficiary

Even though a person has no capacity to enter into contracts they still being a natural person have capacity to accept and hold the legal title to property. Therefore, someone that is insane or an infant has capacity **to** be a beneficiary of a Trust. Any entity, which has the capacity to take and hold legal title to property, can be a beneficiary of a Trust. Examples are the United States, States, Countries, corporations, etc.

Notes:

Lack Of Capacity To Be Beneficiary

The question of capacity is determined on whether or not a person has capacity to hold the legal title to property. An example would be that a dead person could not hold legal title to property because he is not alive and this shows lack of capacity to be a beneficiary. However under common law a woman could not own property apart from her husband but could be a beneficiary of a Trust. Unincorporated Associations may not hold title to property but have capacity to be a beneficiary of a Trust.

Notes:

Married Women

Under common law, the wife could not own property apart from her husband. However Trusts were the only means that **allowed** women to enjoy the beneficial interest of property and tangible and intangible property apart from their husbands. The Trust also prevented the husband from assigning her interests to others. Now women enjoy unrestricted ownership of property and the legal and equitable interest in all types of property free from the claims or restrictions of her husband.

Notes:

Unincorporated Associations

Under common law, an unincorporated association was not a legal entity and therefore could not hold legal title to property. A Trust for the benefit of unincorporated associations must be a beneficial interest in favor of the individual members of the unincorporated association at the time of the creation of the Trust. It can also be for the beneficial interest of those future members as long as the rule against perpetuities is not violated. In the United States a Trust for the benefit of an unincorporated non-charitable association is invalid on the grounds that the unincorporated association is not a legal entity and cannot be the beneficiary of a Trust; only the individual members, current and future can hold beneficial interests as beneficiaries of a Trust, as long as the rule of perpetuities is not violated in the expanse of the time of future members. There have been cases where the United States Courts have

allowed these type of Trusts for unincorporated associations, however it could be a costly move to have a Trust revoked by the court and the property suddenly be subject to creditors and taxation.

Note:

Members Of A Definite Class

So long as members of a definite class are named beneficiaries of a Trust and they are ascertained to determine their membership of the class to be designated and their identity is determined by the description of the class the Trust is valid. The rule against perpetuities must not be violated in this process of identification. The beneficiaries are usually relatives like children, grandchildren, nephews, nieces or heirs of next of kin of designated persons. They could also be members of a class of fraternal orders, business partners of the Settlor or the like.

Notes:

Indefinite Or General Purposes

Indefinite Trusts are where there are no definite beneficiaries to hold beneficial interest in the Trust, where no beneficiary benefits from the purpose and accomplishment of the Trust, and where the purpose of the Trust is general and not specific, usually fail and become a resulting Trust for the residuary legatee or next of kin of the Settlor.

Notes:

Specific Non-Charitable Purposes

These are rare today and an example of a non-charitable purpose Trust would be a Trust for the benefit of the maintenance of a Gravestone or cemetery lot or for the benefit of a dog or a cat. Trusts of this nature are valid Trusts but not ordinary.

Notes:

The Rule Against Perpetuities

Trusts that are created without duration and attempt to tie up property for an indefinite period are not valid Trusts. The period of the rule against perpetuities is 21 years. Therefore a Trust may not be created that will survive beyond a 21 years after the demise of the last identified beneficiary. However a Trust may not last perpetually; it must end in conformity with the rule against perpetuities.

Notes:

Who Are Beneficiaries

The statement of intention of the Settlor determines who will enjoy beneficial interests of the Trust as beneficiaries. Only one exception to this rule exists, where a legal or equitable interest is limited to a person for their lifetime and a similar interest is limited to his/her heirs the person acquires a legal or equitable interest in fee simple and the heirs receive no interest even though the Settlor intended for the heirs to benefit. Some States and Countries have held this rule invalid and that it has no application to personal property. A pitfall in the Living Trust scenario is the result of a Settlor conveying property in Trust to pay the income to himself for life and on his death to pay the principal to his heirs or next of kin, and where the Settlor is the sole beneficiary of the Trust it is held that since the Settlor had an equitable life estate and an equitable remainder that was limited to his heirs or next of kin, that Shelley's Case was applicable and the heirs or next of kin could not benefit from the Trust.

Notes:

Extent Of The Beneficiary's Interest

The manifestation of the intention of the Settlor determines the beneficial interest of the beneficiary. A certificate of beneficial interest must evidence the beneficiary's beneficial interest.

Notes:

Disposition Of Income And Principal

The trustee, when so empowered by the Settlor, determines the disposition of income and principal. On the other hand the Settlor may determine in the terms and conditions of the Trust what the dispositions of income and principal are to be and which beneficiaries will receive a specified percent of the corpus of the Trust.

Notes:

Discretionary and Non-Discretionary

When the Settlor creates the Trust he determines whether or not the Trust will be discretionary or non-discretionary in the empowerment of the trustee. If discretionary, the trustee may disburse whatever amount of the corpus of the Trust as he shall in his absolute discretion determine to any or all of the beneficiaries of the Trust that are entitled to beneficial interest. In a non-discretionary Trust the trustee must apply the corpus of the Trust in accordance with the extent of the interest of the beneficiaries according to the

manifestation of intention of the Settlor. The trustee has no discretion in this type of Trust. When family Trusts are created by a Settlor whether the members of the person's family have a beneficial interest in the Trust depends on the statement of intention of the Settlor. Whether or not the Trust is discretionary or non-discretionary is determined by the declarations of intention of the Settlor. In personal Trusts where a beneficiary is entitled to receive a part of the income or principal or to have any part applied to their use and may be entitled only to certain types of enjoyment under the Trust could be a discretionary Trust depending on the manifestation of intention of the Settlor.

Notes:

Section Six

True or False

A Trust can be created in favor of a person who is not sufficiently identified as a beneficiary of the Trust.

T ___ F ___

Trusts can be created for beneficiaries that are not specifically named by the Trust at the time of creation but who can be determined from existing facts at the time the Trust is created.

T ___ F ___

Trusts can be created where the beneficiaries are referred to as partners of the creator, servants, caretakers, or persons in employ of the creator or others designated in whatever manner the creator of the Trust elects to name the beneficiaries. Unborn children can be named, for it is not necessary that beneficiaries of a Trust should be in existence at the time of the formation of the Trust. As the unborn children can become beneficiaries of a Trust, it can be created in favor of a corporation or company not yet organized.

T ___ F ___

Non-existent entities may be named as beneficiaries as long as they are formed or come into existence within the period of rule of perpetuities.

T ___ F ___

Trusts can be formed for deceased persons or entities that do not come into existence.

T ___ F ___

Trusts may be created for many beneficiaries or one at the discretion of the trustee of the Trust.

T ___ F ___

Interests of several beneficiaries can be enjoyed simultaneously and successively.

T ___ F ___

Beneficiaries cannot enjoy the beneficial interest of a Trust for life and the beneficial interest could not then pass to the other beneficiaries at his/her death, nor their interest could not pass to a child of the deceased beneficiary or other designated entity.

T ___ F ___

Trusts can be created for the benefit of a single beneficiary. These type of Trusts are usually used to convey property to a relative, usually a wife or child.

T ___ F ___

Sometimes a Settlor will transfer property into Trust and become the sole beneficiary of the Trust, usually to pay them income for a period of time until a trigger event like their death conveys the property and income to another beneficiary.

T ___ F ___

A Settlor of a Trust may not be the sole beneficiary or one of many beneficiaries.

T ___ F ___

A sole trustee may never be the sole beneficiary of a Trust.

T ___ F ___

A major disadvantage of a Living Trust construction is that when a beneficial interest created and reserved to the Settlor of the Trust can be alienated or reached by his creditors even if the Trust construction stipulates otherwise in the terms.

T ___ F ___

It is possible in a Trust creation for the Settlor to appoint one of the beneficiaries as trustee of the Trust.

T ___ F ___

A sole trustee may be the sole beneficiary of a Trust.

T ___ F ___

Even though a person has no capacity to transfer property or enter into contracts they still being a natural person have capacity to accept and hold the legal title to property.

T ___ F ___

Someone that is insane or an infant has capacity to be a beneficiary of a Trust.

T ___ F ___

Any entity who has the capacity to take and hold legal title to property can be a beneficiary of a Trust.

T ___ F ___

The question of capacity is determined on whether or not a person has capacity to hold the legal title to property.

T ___ F ___

Under common law a woman could not own property apart from her husband but could be a beneficiary of a Trust.

T ___ F ___

Unincorporated Associations may hold title to property and have capacity to be a beneficiary to a Trust.

T ___ F ___

In ancient times Trusts were the only means that allowed women to enjoy the beneficial interest of property and tangible and intangible property apart from their husbands. The Trust also prevented the husband from assigning her interests to others.

T ___ F ___

A Trust for the benefit of unincorporated associations must be a beneficial interest in favor of the individual members of the unincorporated association at the time of the creation of the Trust. It can also be for the beneficial interest of those future members as long as the rule against perpetuities is not violated.

T ___ F ___

In the United States a Trust for the benefit of an unincorporated non-charitable association is invalid on the grounds that the unincorporated association is not a legal entity and cannot be the beneficiary of a Trust, only the individual members, current and future can hold beneficial interest as beneficiaries of a Trust, as long as the rule of perpetuities is not violated in the expanse of the time of future members.

T ___ F ___

So long as members of a definite class are named a beneficiaries of a Trust and they are ascertained to determine their membership of the class to be

designated and their identity is determined by the description of the class the Trust is valid.

T ___ F ___

The rule against perpetuities must not be violated in the process of identification of beneficiaries.

T ___ F ___

Indefinite Trusts where there are no definite beneficiaries to hold beneficial interest in the Trust, where no beneficiary benefits from the purpose and accomplishment of the Trust, and where the purpose of the Trust is general and not specific are usually fail and become a resulting Trusts for the residuary legatee or next of kin of the Settlor.

T ___ F ___

An example of a non-charitable purpose Trust would be a Trust for the benefit of the maintenance of a gravestone or cemetery lot or for the benefit of a dog or a cat. Trusts of this nature are valid Trusts but not ordinary.

T ___ F ___

Trusts that are created without duration and attempt to tie up property for an indefinite period are not valid Trusts. The period of the rule against perpetuities is 21 years. Therefore a Trust may not be created that will survive beyond a 21 year period initially with certain renewal periods. However a Trust may not last perpetual, it must end in conformity with the rule against perpetuities.

T ___ F ___

Where a testator intends to make a beneficial gift and does not impose upon a legatee any binding restrictions as to his disposition of the property in any manner or form. In such a case the question of compelling the legatee to form a Trust to administer the disposition of the property is entirely optional and often a Trust is the result of the matter.

T ___ F ___

Those who hold incidental beneficial interest with a Trust are beneficiaries of a Trust but are those who profit as a result of an action of the Trust or trustees of the Trust.

T ___ F ___

A Trust purchases some bonds from A who in turn acts as an agent for the Trust and sells the bonds to B and makes profit from the sale of the bonds as well as a profit on the original sale of the bonds to the Trust. This is profit by incidental beneficiary.

T ___ F ___

The manifestation of intention of the Settlor determines who will enjoy beneficial interest of the Trust as beneficiaries, with only one exception to this rule.

T ___ F ___

A pitfall in the Living Trust scenario is the result of a Settlor conveying property in Trust to pay the income to himself for life and on his death to pay the principal to his heirs or next of kin, and where the Settlor is the sole beneficiary of the Trust it is held that since the Settlor had an equitable life estate and an equitable remainder that was limited to his heirs or next of kin, that Shelley's Case was applicable and the heirs or next of kin could not benefit from the Trust.

T ___ F ___

The manifestation of the intention of the Settlor does not determine the beneficial interest of the beneficiary. A certificate of beneficial interest must evidence the beneficiary's beneficial interest.

T ___ F ___

The trustee when so empowered by the Settlor determines the disposition of income and principal.

T ___ F ___

The Settlor may not determine in the terms and conditions of the Trust what the disposition of income and principal are to be and to which beneficiaries will receive the percent of the corpus of the Trust.

T ___ F ___

When the Settlor creates the Trust it is determined whether or not the Trust will be discretionary or non-discretionary in the empowerment of the trustee by the Settlor in the terms and conditions of the Trust.

T ___ F ___

If discretionary the trustee may not disperse whatever amount of the corpus of the Trust as he shall in his absolute discretion to any or all of the beneficiaries of the Trust that are entitled to beneficial interest.

T ___ F ___

In a non-discretionary Trust the trustee must apply the corpus of the Trust in accordance with the extent of the interest of the beneficiaries according to the manifestation of intention of the Settlor. The trustee has complete discretion in this type of Trust. When family Trusts are created by a Settlor whether the members of the person's family have a beneficial interest in the Trust depends on the manifestation of intention of the Settlor.

T ___ F ___

This is the end of the Six Sections of the Training on Scott on Trusts and the Final Examination on each Section of the Course. Be sure that you have marked each answer with an X or completed the answers according to the instructions given you in each Section. Sign the each Examinations and deliver or mail it to the James Blakeman. Your work will be reviewed and graded. All Examinations will then be kept on file.

Associate Signature

Date

Print Your Name

Code

(Office Use Only)

Appendix A (Copyrighted Spendthrift Trust Format)

Study and Familiarize Yourself With the Copyright

TRUST AGREEMENT TRUST NAME HERE

Trust agreement made as of **DATE HERE**, by and between **SETTLOR NAME HERE**, County of **COUNTY HERE**, State of **STATE HERE**, as Settlor, and **TRUSTEE OR TRUSTEES NAME HERE** of **ADDRESS OF TRUSTEE(S) HERE**, County of **COUNTY HERE**, State of **STATE HERE** as Trustee. **COMPLIANCE OVERSEER NAME HERE** is hereby and herein appointed Compliance Overseer and Protector of the Trust with the authority to act as provided in Section XVII.K.

In consideration of the mutual covenants and promises set forth herein, Settlor and trustee agree:

Section I

Transfer in Trust

Wishing to create a trust for the benefit of **BENEFICIARIES NAMES HERE**, Settlor hereby assigns, transfers and conveys to trustee the property described in "Receipt and Acknowledgement", attached and incorporated by this reference. Trustee hereby acknowledges receipt of such property. Such property, hereafter designated the trust estate, shall be held by trustee in trust for the uses and purposes and on the terms and conditions set forth herein.

Section II

Disposition of Principal and Income

Trustee shall administer and manage the trust estate, collect the income therefrom, and, after payment of all taxes and assessments thereon and all charges incident to the management thereof, apply and dispose of the net income and the principal of the trust estate as follows:

- A. The Trustee may distribute so much of the net income, the principal, or both, of the trust to the beneficiaries and the descendants of the beneficiaries of the trust as the Trustee deems to be in the beneficiaries' best interests. If one of the beneficiaries

should die before the Trust share for his or her benefit terminates, leaving surviving descendants, then that beneficiary's interest in the trust shall pass to those descendants, per stirpes, and each recipient shall become a beneficiary of this Trust. If no such descendants shall survive, then the interest in the trust of the deceased beneficiary continue to be distributed to any surviving beneficiaries in accordance with all terms and provisions provided herein. The interest of any beneficiary in the principal or income of the trust herein created shall not be assigned. Should an attempt be made to alienate or dispose of the principal or income to which such beneficiary is entitled under this trust, or if by reason of bankruptcy, insolvency, or any other cause, the principal or income payable hereunder cannot be personally enjoyed by that beneficiary, such principal or income shall not be paid to beneficiary, and all interest of beneficiary in this trust shall immediately cease and the principal or income that would have been payable to such beneficiary shall be applied to, and shall augment, the principal or income of the remaining beneficiaries. Should trustee feel that circumstances justify reinstatement of the beneficiary's right to receive principal or income that such beneficiary would have received hereunder but for a prior disqualification, trustee may, in his absolute discretion, restore to that beneficiary the right, to receive the principal and income to which he or she was originally entitled under the terms of this trust. In the alternative, trustee may apply to the use of the descendant of such beneficiary so much of the principal or income to which the beneficiary is entitled as trustee, in trustee's absolute discretion, determines is necessary to carry out the purpose of this trust.

- B. This trust shall continue until **DATE HERE NOT TO EXCEED 21 YEARS FROM THE CREATION OF THE TRUST** 20____. At such time the trust shall terminate and trustee shall distribute the trust principal and any accumulated income as the trustee, in his sole discretion, shall determine to be in the best interests of the beneficiaries. Trustee may, at any time trustee elects and can legally do so, and in trustee's absolute discretion, extend the term of this trust for any period of time. Notwithstanding anything in this agreement to the contrary, the trust herein created shall not continue beyond 21 years after the death of the last of the currently living descendants of those beneficiaries living at the time of the creation of the trust. On the expiration of such period, the trust herein created shall terminate, and the trust property shall be distributed, in the trustee's sole discretion, to those persons entitled to receive the income at the time of termination.

Section III

Additions to Trust

Settlor and any other person shall have the right at any time to add property acceptable to trustee to this trust. Such property, when received and accepted by trustee, shall become part of the trust estate.

Section IV

Irrevocability of Trust

This trust shall be irrevocable and shall not be revoked by Settlor or any other person. Nor shall this trust be amended or altered by Settlor or any other person.

Section V

Powers of Trustee

In addition to all other powers and discretions granted to or vested in trustee by law or by this instrument, trustee shall have the following powers and discretions, to be exercised only in a fiduciary capacity, primarily in the interest of those beneficiaries who are at any given time entitled to the income from the trust estate:

- J. General Powers. To do all such acts, take all such proceedings and exercise all such rights and privileges in the management of the trust estate as if he were the absolute owner thereof, including, without limiting the generality of the terms, the following:
 - (8) Power of Sale. To hold, manage, operate, control, repair, preserve, improve, partition, divide, subdivide, sell (at public or private sale and for cash or on credit), convey, exchange, convert, grant options on, or otherwise deal with trust property;
 - (9) Power To Lease. To lease for terms either within or beyond duration of this trust, properties, including oil, gas and other mineral interests, on such terms as trustee may deem proper; and to enter into pooling, unitization, repressurization, community and other types of agreements relating to the development, operation and conservation of mineral properties;

- (10) Power To Loan and Invest. To loan, reloan, invest and reinvest the trust estate or any part thereof;
 - (11) Power To Manage Securities. To vote stock, give proxies, pay calls for assessments, sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers, liquidations, pooling agreements and voting trusts, assent to corporate sales and other acts and, in connection therewith, to deposit securities with and transfer title to any protective or other committee under such terms as trustee may deem advisable;
 - (12) Power To Hold Securities in Name of Nominee. To hold securities or other property in trustee's own name or in the name of trustee's nominee, without disclosing any fiduciary relation;
 - (13) Power to Insure. To procure and carry, at the expense of the trust, estate insurance of such kind and in such form and amount as trustee deems advisable to protect trustee and the trust estate against any hazard;
 - (14) Power To Borrow Money and Hypothecate Trust Assets. To borrow money for any trust purpose, hypothecate the trust estate or any part thereof and replace, renew and extend any encumbrance thereon, on such terms, conditions and security as may be determined by the trustee and to pay loans or other obligations of the trust estate, as trustee, in trustee's discretion, deems advisable.
- K. Power to Retain Trust Property. Trustee, in trustee's discretion, is expressly authorized to hold and retain any securities, properties, or other investments for such length of time, as trustee deems advisable.
- L. Investment Powers. In investing, reinvesting, purchasing, acquiring, exchanging and selling property for the benefit of this trust, trustee shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, and stocks, preferred or common, which persons of prudence, discretion and intelligence acquire for their own account.
- M. Power To Determine Principal and Income. Unless otherwise specifically provided herein, trustee, in trustee's discretion, may determine what is principal or income and what shall be charged or credited to either. Trustee's judgment shall bind everyone beneficially interested hereunder. Trustee may rely on the statement of the paying

- corporation as to whether dividends are paid from profits or earnings or are a return of capital or a distribution of assets, and as to any other fact relevant hereunder concerning the source or character of dividends or distributions of corporate assets.
- N. **Power To Compromise Claims.** Trustee may, at trustee's option, at any time, in connection with trustee's management of the trust estate or the collection of any moneys due or payable to trustee as trustee hereunder, compromise or abandon any claims existing in favor of or against the trust estate.
- O. **Distribution or Division in Kind.** On any division of the trust estate into separate shares or trusts and upon any distribution, trustee may apportion and allocate the assets of the trust estate in cash, or in kind, or partly in cash and partly in kind, or in undivided interests, in such manner as trustee, in trustee's discretion, deems advisable. Trustee may sell such property, as trustee deems necessary to make any such division or distribution. After any division of the trust estate, the trustee may make joint investment with funds from some or all of the several shares or trusts.
- P. **Termination in Trustee's Discretion.** If the trust, in the absolute discretion of trustee, becomes sufficiently small in value that the administration thereof is no longer economically desirable, the cost thereof is disproportionate to the value of the assets, or the continuation thereof is no longer in the best interest of the beneficiary or beneficiaries, trustee may terminate such trust. On termination as herein provided, trustee shall distribute the property of such trust to the person or persons, then entitled to receive the income therefrom, in such shares as the trustee, in his sole discretion, shall determine to be in the best interests of the beneficiaries.
- Q. **Trustee's Discretion.** All discretions granted to or vested in trustee by any provision of this instrument are to be exercised in the sole and absolute discretion of trustee. However, no such discretion shall be exercised other than in a fiduciary capacity, primarily in the interests of the beneficiaries.
- R. **Limitations on Trustee's Powers.** Notwithstanding any other provision of this trust instrument, no power exercisable by trustee shall be construed so as to enable trustee, Settlor, or any other person to purchase, exchange, or otherwise deal with or dispose of the corpus or income therefrom for less than an adequate consideration in money or money's worth or to enable Settlor to borrow the corpus or income, directly or indirectly, without adequate interest or security. No person other than trustee acting in a fiduciary capacity shall have the power to vote or direct the voting of stock or other securities, to control the investment of trust funds either by directing investments or reinvestments, or to permit any person to reacquire the trust corpus by substituting other property of an equivalent value.

Section VI

Compensation of Trustee

Trustee may receive compensation for the performance of his duties as Trustee, and that Trustee shall have a right to be reimbursed for all expenses incurred on behalf of the Trust.

Section VII

Successor Trustee

Trustee, or any successor, may resign at any time on giving written notice, thirty days before such resignation shall take effect, to Compliance Overseer and Protector of the Trust or after the death of Compliance Overseer and Protector of the Trust, to all adult beneficiaries and to the guardian, conservators, or other fiduciaries of the estates of any minor or incompetent beneficiaries who may then be receiving or entitled to receive income hereunder. On the resignation, incompetency, or death of the original trustee, **SUCCESSOR TRUSTEE NAME HERE** shall become the successor trustee on trustee's written acceptance of the duties of trustee hereunder. The Trustee and his successor Trustees shall have the right to designate such additional successor Trustees as Trustee, in his sole discretion, shall consider necessary or prudent. Each successor Trustee shall, upon assumption of the duties of the office, have all the title, powers, rights and discretions given herein to the original fiduciary automatically and without any conveyance, transfer or order of court.

Section VIII

Payment of Death Taxes

Trustee is authorized and directed to pay out of the principal of the trust estate the proportionate share of any succession, legacy, inheritance, death, transfer or estate taxes, including any interest and penalties thereon, that may be assessed by reason of the death of a person who transferred assets to the trust. In making such payments, trustee may rely on the written statement of the executor or administrator of the estate of such transfers as to the proportionate share of such taxes chargeable to the trust estate.

Section IX

Allocation of Principal and Income

Except as otherwise specifically provided in this agreement, trustee shall have full power and authority to determine, in trustee's absolute discretion, what shall constitute principal of the trust estate, gross income from the trust estate, and net income of the trust estate distributable under the terms hereof.

Section X

Accounting

Trustee at any time shall be entitled to render to a current income beneficiary or beneficiaries of the trust estate an account of the acts of trustee and transactions with respect to the income and principal of the trust estate from the date of the creation of the trust or from the date of the last previous account of trustee. Such beneficiary or beneficiaries shall have full power and authority on behalf of all persons now or hereafter interested in the trust to finally settle and adjust such account. Approval of such account by such beneficiary or beneficiaries shall constitute a full and complete discharge and release of trustee from all further liability, responsibility and accountability for or with respect to the acts and transactions of trustee as set forth in such account, both as to income and principal.

Section XI

Payments to Minors

Trustee, in trustee's sole discretion, may pay any principal or income applicable to the use of a minor to the parent or guardian, to a person having care and control of such minor, or directly to such minor, or trustee may apply the same for the minor's benefit. Any payment so made shall be a full and sufficient discharge of trustee with respect thereto. Also, trustee may accumulate for the benefit of any minor any part or all of the income applicable to such minor's use as trustee in trustee's discretion may deem advisable. Such accumulated income may be paid to such minor on his or her attaining the age of eighteen years, or at such later date as Trustee may determine.

Section XII

Death of Beneficiary; Accrued and Undistributed Income

On the death of any beneficiary who holds a beneficial interest in this trust, any accrued or undistributed net income thereon shall be held and accounted for, or distributed, in the same manner as if it had been accrued or received after the death of such beneficiary.

Section XIII

Notice of Events

Until trustee shall receive from some person interested in this trust written notice of any death, birth, marriage or other event on which the right to receive income or principal of the trust estate may depend, trustee shall incur no liability for any disbursements or distributions made or omitted in good faith.

Section XIV

Acts of Trustee

Any instrument executed by trustee shall be binding on all parties hereto and on all beneficiaries hereunder. No person paying money to trustee need see to the application of the money so paid.

Section XV

Bond of Trustee

No Trustee at any time acting hereunder shall be required to give any bond or other security for the faithful performance of his duties as such Trustee.

Section XVI

Spendthrift Provision

Except as herein otherwise expressly provided, all income or principal to be paid to any of the beneficiaries shall be paid by trustee directly and only to the beneficiaries or to the

personal representative of any beneficiary, or, where authorized, shall be applied for the benefit of any beneficiary. Trustee shall not recognize any transfer, mortgage, pledge, hypothecation, order, or assignment of any beneficiary by way of anticipation of income or principal.

The income and principal of any trust hereinunder shall not be subject to transfer by operation of law, and shall be exempt from the claims of creditors or other claimants, and from orders, decrees, levies, attachments, garnishments, executions, and other legal or equitable process or proceedings to the fullest extent permissible by law. If any creditor or other claimant attempts by any means to subject to the satisfaction of the claim of such creditor or claimant the interest of any beneficiary entitled by the provisions thereof to receive income or periodic payments from the principal or income, or both, then notwithstanding any other provisions herein, that beneficiary, during such time thereafter as trustee, in trustee's absolute discretion, shall deem advisable, shall not be entitled to receive payments from the trust. However, during the time payments are so suspended, trustee, in trustee's absolute discretion, may pay to or expend for the benefit of such beneficiary as much of the trust net income, not to exceed the income to which such beneficiary would otherwise be entitled, as trustee deems necessary for the health, support and education of such beneficiary in accordance with the latter's station in life.

All income determined by trustee to be in excess of the amount thus necessary shall be accumulated and added to trust principal. Trustee may, however, deposit in any bank designated in writing by a beneficiary to his or her credit income or principal payable to such beneficiary.

Section XVII

Construction

- A. Exculpatory Clause. No fiduciary acting hereunder shall be liable for any loss occasioned by acts in good faith in the administration of his duties hereunder, or in reliance of an opinion of counsel, and in any event such fiduciary shall be liable only for willful wrongdoing, or gross negligence, but not for honest errors of judgment.
- B. Third Parties. No person, firm, corporation or association dealing with any fiduciary appointed hereunder shall be required to take notice of any of the provisions herein contained or to see to the application or disposition of any money or property sold or transferred to such fiduciary.
- C. Survivorship. Except as otherwise expressly provided herein to the contrary, in the event of any beneficiary's right to receive any property hereunder is dependent on his survivorship of some person and such beneficiary shall die within thirty (30) days after the death of such person, such beneficiary shall be deemed not to have survived such person.

- D. Successor Fiduciaries. Any reference herein to any fiduciary shall mean, refer to and include any successor to such fiduciary when required by the facts. Every successor fiduciary shall, upon assumption of the duties of the office, have all the title, powers, rights and discretions given herein to the original fiduciary automatically and without any conveyance, transfer or order of court.
- E. Trust Estate. As used herein, the term "trust estate" shall include all property received initially by the Trustee with respect to this trust, all additions thereto received by the Trustee from any other source, all investments and reinvestments of such property or such additions thereto, and all accrued and undistributed income of such trust.
- F. Number and Gender. As used herein, the masculine, feminine and neuter gender each includes the others, the singular, plural each includes the other, and this instrument shall be read accordingly when required by the facts.
- G. Descendants. As used herein the terms "child" or "children" shall mean lawful descendants in the first degree of the designated parent, "grandchild" or "grandchildren" shall mean lawful descendants in the second degree of the designated parent, and "descendant" or "descendants" shall mean lawful descendants in the first, second or any other degree of the designated ancestor; provided, however, that a legally adopted child who shall not have attained the age of twenty-one (21) years prior to adoption and the descendants of any such adopted child shall be regarded for all purposes herein as the descendants of the adopting parent or parents, and of anyone who is by blood or adoption an ancestor of the adopting parent.
- H. Heirs-at-Law. As used herein, the term "heirs-at-law" shall mean only those persons other than creditors who would receive the personal property of the person designated under the laws of the state of the domicile of the person executing this instrument then in force as if said designated person had died interstate on the date stipulated for distribution unmarried and domiciled in said state, and in such shares as if said designated person had owned only the property constituting the trust estate of the trust to be distributed among such heirs-at-law.
- I. Per Stirpes. As used herein, the term "per stirpes" shall have its accepted legal meaning, so that, for example, if a distribution is to be made to "descendants per stirpes" of a specified person and one of said person's children is deceased but is survived by children, then the share which would otherwise have been distributable to such deceased child of said specified person had he then been living shall be divided equally among the children of the deceased child. As a further example, and consistent therewith, if all of the children of the said specified person shall be deceased, then the share which would otherwise have been distributable to each such deceased child shall be divided equally among the children of each such deceased child with the effect that the children of each such child of said specified person will

- receive by right of representation the share which their parent would have received had he then been living.
- J. Interpretation. This document and each separate trust created herein shall be construed and administered and the validity thereof determined in accordance with the laws of the State of Texas.
- K. Compliance Overseer. As used herein, the term "Compliance Overseer" shall mean **COMPLIANCE OVERSEER NAME HERE** whose signature of acceptance are herein recorded and notarized, who shall be responsible for the oversight of the actions of the Trustee and conform if necessary the actions of the Trustee to the limits of the Powers of the Trustee. Such Compliance Overseer shall have the power to remove and replace any Trustee at any time with or without reason or cause. Further, such Compliance Overseer shall have the power to cause all the interests of a beneficiary in this trust to immediately cease by delivering a written notice of the cessation of such interest to the trustee. Such decision to cause a beneficial interest to cease shall be made with respect to any beneficiary of this trust at any time in the sole discretion of the Compliance Overseer, with or without cause. The Compliance Overseer shall have the power to add any person as a beneficiary of this trust at any time by delivering written notice of such addition to the trustee; (except **COMPLIANCE OVERSEER AND/OR SETTLOR NAMES HERE** who shall never be a beneficiary of this trust). Such decision to add a person as beneficiary may be made at any time in the sole discretion of the Compliance Overseer, with or without cause. The Compliance Overseer shall not be liable for any loss occasioned by acts in good faith in the administration of his duties hereunder, or in reliance of an opinion of counsel, and in any event such Compliance Overseer shall be liable only for willful wrongdoing, or gross negligence, but not for honest errors of judgment. Compliance Overseer shall have a right to be reimbursed for all expenses incurred on behalf of the Trust.

Compliance Overseer, or any successor, may resign at any time on giving written notice, thirty days before such resignation shall take effect, to Beneficiaries of the Trust or after the death of Compliance Overseer and Protectors of the Trust, to all adult beneficiaries and to the guardian, conservators, or other fiduciaries of the estates of any minor or incompetent beneficiaries who may then be receiving or entitled to receive income hereunder. On the resignation, incompetency, or death of the original Compliance Overseer, **SUCCESSOR COMPLIANCE OVERSEER NAME HERE IF KNOWN AT THE TIME OF CREATION OF THE TRUST** shall become the successor

- Compliance Overseer(s) on Compliance Overseer's written acceptance of the duties of the Compliance Overseer hereunder. The Compliance Overseer and his successor Compliance Overseer shall have the right to designate such additional successor Compliance Overseer as Compliance Overseer, in his sole discretion, shall consider necessary or prudent. Each successor Compliance Overseer shall, upon assumption of the duties of the office, have all the title, powers, rights and discretions given herein to the original fiduciary automatically and without any conveyance, transfer or order of court.
- L. Certificates. The Trustees shall issue to each Beneficiary a certificate of his beneficial interest in the Trust property in such form as they may determine which shall be transferable only on the books of the Trust, upon surrender of the certificate. Upon such transfer a new certificate shall be issued to the transferee, who shall thereupon become subject to the terms of this agreement, and entitled to the benefits thereof.

Section XVIII

Trustee's Acceptance; Governing Law; Severability

This trust has been accepted by the trustee and will be administered in the State of Texas. The laws of that state thereunder shall govern its validity, construction and all rights, provided, however, the trustee, by written instrument filed with the trust records, may elect to change the sites and governing law of the trust to either the domicile of the trustee or the state where the principal assets of the trust are located. If any provision of this trust agreement should be invalid or unenforceable, the remaining provisions thereof shall continue to be fully effective.

In witness whereof, Settlor and trustee have executed this agreement at **COUNTY NAME HERE** County, in the State of **STATE NAME HERE**, the day and year first above written.

SETTLOR: **SETTLOR NAME HERE**

Witness

SIGNATURES

TRUSTEE: **TRUSTEE NAME HERE**

Witness

Compliance Overseer's Acceptance

The responsibilities and duties of Compliance Overseer as Trust Protector have been accepted by **COMPLIANCE OVERSEER NAME HERE** , and will be administered in accordance with the terms of this trust agreement.

COMPLIANCE OVERSEER: **COMPLIANCE
OVERSEER NAME HERE**

Witness

APPOINTMENT OF INITIAL TRUSTEE

TRUST NAME HERE TRUST [□]

(Herein and hereafter “(TRUST ABBREVIATION)”) (“Trust”)

The SETTLOR **SETTLOR NAME HERE** herein does hereby name and appoint the **INITIAL TRUSTEE NAME HERE** INITIAL TRUSTEE hereof, namely **INITIAL TRUSTEE NAME HERE** according to the provisions of the Trust; and

WHEREAS, **INITIAL TRUSTEE NAME HERE** in acceptance of the appointment assigned to him/her/them namely, the office of Initial TRUSTEE of this Trust and in that capacity to carry out all the expressed and implied duties of this Spendthrift Trust, subject to all the provisions of the Articles of the Trust; and the said Trustee does hereby accept such appointment.

NOW, THEREFORE THE SETTLOR **SETTLOR NAME HERE** and **INITIAL TRUSTEE NAME HERE** INITIAL TRUSTEE have set his/her/their hand(s) and signature(s) in witness of the appointment and acceptance thereof and the Trustee agrees to perform all the terms, conditions, covenants, mutual covenants, stipulations, and duties imposed, implied, and expressed in the Articles of the Trust. Dated this the _____th day of _____, 20____.

SETTLOR: **SETTLOR NAME HERE**

Signature

Date

ACCEPTED BY: **INITIAL TRUSTEE NAME HERE**

I, the undersigned, hereby accept as Initial TRUSTEE of (TRUST ABBREVIATION), a Spendthrift Trust, along with all the terms, conditions, covenants, mutual covenants, stipulations, and duties imposed, and expressed in the Articles of the Trust.

INITIAL TRUSTEE: **INITIAL TRUSTEE NAME HERE**

Signature

Date

Witness

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**RECEIPT AND ACKNOWLEDGEMENT:
CERTIFICATION OF INITIAL TRUST PROPERTY RECEIVED
TRUST NAME HERE TRUST[□]**

STATE OF: **STATE NAME HERE**

COUNTY OF: **COUNTY NAME HERE**

Comes now **SETTLOR NAME HERE** on the ___th day of _____, 20___, Settlor of **(TRUST ABBREVIATION)**, a Spendthrift Trust, and **INITIAL TRUSTEE NAME HERE** Initial Trustee of said Trust and herein join in the following Receipt and Acknowledgement of delivery and receipt of the trust property.

1. That **INITIAL TRUSTEE NAME HERE** has been duly appointed Trustee of **(TRUST ABBREVIATION)**, a Spendthrift Trust.
2. That Settlor has personal knowledge of the facts recited herein and confirms the delivery by him to the Trust, and the said Trustee acknowledges receipt thereof.
3. That Trustee has received a copy of the Articles of the Trust creating **(TRUST ABBREVIATION)**.
4. Trustee hereby acknowledges the specific receipt _____

_____, being trust property to initiate the operations of the said Trust.

INITIAL TRUSTEE: NAME OF INITIAL TRUSTEE HERE

SETTLOR: SETTLOR NAME HERE

Signature

Signature

Witness

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LETTER OF TRANSFER AND CONVEYANCE OF PROPERTY

To the Trustee(s) for and on Behalf of **TRUST NAME**

WHEREFORE, I, _____, being of sound mind and reasonability. And under no threat, duress or coercion whatsoever, do hereby and through this LETTER OF TRANSFER, irrevocably **convey, transfer, endow and capitalize TRUST NAME** with the below described property(s) and or assets to the full ownership, control and use of **TRUST NAME** without reservation or recourse. Property(s) described herein are under my full control and authority to so make and conduct this Transfer.

DESCRIPTION OF PROPERTY(S) TO BE CONVEYED

Transferor Signature Title Date

Signature Witness

TRUSTEES ACCEPTANCE OF TRANSFER OF PROPERTY(S)

I, _____ Trustee, do acknowledge and accept, hereby, the transfer, conveyance and receipt of said above described property(s) as Trustee for the **endowment or capitalization** of **TRUST NAME** and on behalf of **TRUST NAME** with full title and authority so to do.

Trustee Signature Title Date

Signature Witness