

HISTORICAL RECOGNITION OF TRUSTS

If S transferred land to T to be used for the benefit of B:

Common law treated T as legal owner and B as having no rights;

Equity recognised B's rights and would compel T to hold the land for the benefit of B;

So, T was the owner at law and B was the owner in equity;

T had *legal* ownership and B had *equitable* (or *beneficial*) ownership.

WHAT IS A TRUST?

In essence, a trust is one method of dividing ownership of property. A trust involves separating out the duties and obligations in relation to the property from the benefits and rights of enjoyment over the property.

The person with the duties and obligations in relation to the property is called the **trustee** and he is said to have the **legal title** to the property. The person with the right to enjoy and benefit from the property is called the **beneficiary** and he is said to have an **equitable or beneficial** interest in the property.

Equity operates on the conscience of the trustee, imposing an obligation on him to carry out the terms of the trust for the benefit of the beneficiary. This obligation is enforceable in court by the beneficiary.

The person who creates a trust by transferring property to the trustee to hold on trust for the beneficiary is called the **settlor**.

Trusts can exist in relation to any form of property, most commonly land or money.

EQUITABLE AND LEGAL OWNERSHIP

The defining feature of the trust is the division of ownership into two sorts:

1. legal ownership – which is vested in the trustee and entails responsibilities but no beneficial enjoyment of the trust property.
2. equitable (or beneficial) ownership – which is enjoyed by the beneficiaries.

CLASSIFICATION OF TRUSTS

1. Express Trusts - These are deliberately created by a settlor and normally used for the protection and preservation of wealth.

Example

S dies leaving a young child, B.

S leaves a validly executed Will, which states that all his property is to be held, by T, on trust for B, until B is 21.

In this case, a trust has been *expressly* created, by way of a Will, in favour of B.

2. Implied Trusts – unlike express trusts, resulting and constructive trusts do not usually arise as a result of the act of the parties. They generally arise because the law imposes them in certain circumstances

Example

S dies leaving a young child, B.

S does not leave a validly executed Will.

According to the Administration of Estates Act 1925, a trust is created in favour of B. The trust has therefore been *implied*, rather than expressly created.

3. Simple (or Bare) Trusts – exist where a beneficiary who is of full age and capacity (*sui juris*) is absolutely entitled to the trust property. The beneficiary may call for the trust property to be transferred to them (so bringing the trust to an end).

Example

S dies leaving a young child, B.

S leaves a validly executed Will, which states that all his property is to be held, by T, on trust for B (without specifying an age for the trust to end).

An express trust has been created.

When B reaches 18 years old (full legal age in UK law) and is of full capacity (i.e. of sound mind), B may call for the legal title of the trust property to be transferred to them, therefore bringing the trust to an end.

The express trust became a *simple trust* at the point when B turned 18 and was therefore able to bring the trust to an end.