

## 1: bits of law | Trusts | Formation | Equity & Trusts: Overview

*An equitable interest is an "interest held by virtue of an equitable title (a title that indicates a beneficial interest in property and that gives the holder the right to acquire formal legal title) or claimed on equitable grounds, such as the interest held by a trust beneficiary."*

Irrevocable Trusts and Divorce: The Irrevocable Trust is considered to be a third party independent owner of assets titled to the Trust without regard of its creators. Courts cannot force equitable distribution of assets held by an independent third party in cases of divorce. Title to property in a community property state are deemed to be owned together by both spouses without regard to who purchased the asset. As a general rule, most property acquired by either spouse during the marriage and while domiciled in the community property state, is deemed to be community property and owned jointly by each spouse and therefore not held by a third party. Third party property is not divisible by the common law state. Generally there are a few exceptions, but you need to consult with each Community State. Property received by one spouse through gift or inheritance. Property received through separate property owned by the spouse outside the community property rules, i. Through ownership by some other legal entity: Partnership, Corporation, or Limited Liability Company. It takes in consideration other non-direct factors, such as: In other words, judges legislate from the bench. So good planning is to never be in front of a judge. The rule against the division of third-party property means that: There are many litigated cases: The presumption that the equitable title is with the owner of the legal title. The third party irrevocable Trust ownership not subject to marital property is further strengthened if the property is owned by an additional independent legal entity i. Please note that all Trusts are not created equal. The key emphasis of an Irrevocable Trust is that the third party must be independent, the Trustee must be an unrelated person and cannot be related to the Grantor by blood or marriage. For more information about who makes a good independent Trustee follow this link: [Selecting a Trustee and: Revocable Trusts](#) I am often asked about Revocable Trusts and to differentiate between revocable and irrevocable. The original owners retain the affective control masked by retaining ownership through electing themselves as Trustee, retain powers to revoke or change Trust assets, retaining power to change Trustees, Beneficiaries, or change the terms of the Trust rendering the legal entity a total sham or the alter-ego of the creator. Assets of a Revocable Trust are marital assets because the original owners Grantors have retained too much power and control over Trust assets, i. Imagine being in front of a judge claiming that you have no control over the Revocable Trust and that you cannot be compelled to make distributions. For further reading of Revocable v. This author is of the opinion that: I will not do it. Repeatedly I have stated that: This intentional disregard, can become a sticky-wicky, for a judge who does not like to be undermined in his court-room. The second major exception to the rule against the division of third-party property is when the courts decide to divide such property because one or both spouses retained an equitable interest in the underlying assets, i. You can avoid this exception by not retaining any rights to the underlying assets of the Trust, i. The third exception is moving assets in anticipation of divorce. So when do you start thinking about Irrevocable Trusts? The first place is to start with your parents. Good planning starts with assets you are going to inherit from your parents. If your parents have an Irrevocable Trust where you are the eventual beneficiary, the best planning is for your parents to reposition your inheritance within an Irrevocable Trust engineered for distributions to occur only when the seas are calm or the Trust retain ownership for the enjoyment of all Beneficiaries. If you are going to become the recipient of a large inheritance, talk to your parents about a proper drafting of an Irrevocable Trust to avoid inheritance taxes, avoid probate, and asset protection and of course eliminate the marital asset problem of divorce. We never share your email information with third parties. We collect your email address so you can benefit from money-saving tips. For more information please review our privacy policy. Are You At Risk of a Lawsuit? Take 5 min to assess your Risk with this free test. Do you need "asset protection"?. Determine your need for protecting your assets. Protecting your assets is vitally crucial from lawsuits.. We collect your email address so we can send you the results and help you protect your assets. Review Our Book Review our book to learn the things you need to know to protect your assets. Learn what to do if "you are being sued". What is a

## TRUSTS AND EQUITABLE INTERESTS pdf

trust? Learn the difference between a revocable and irrevocable trust? What can you do before you are being sued? What can you do if you are being sued now?

## 2: The distinction between legal and equitable interests - Law Trove

*Legal rights and equitable interest in a property* The concept of property is one that is problematic in nature, and one that had been subject to substantial definition (and re-definition) over a significant period of time.

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A private trust of land can arise in several ways: Joint tenants do not have specific shares in the land and have a right of survivorship. On the death of one joint tenant, their interest in the land passes automatically to the others. Tenants in common, however, had specific shares, known as undivided shares, which could be transferred separately, and were inherited as part of their estate on their death. They became divided shares if the land was partitioned, so that each became the sole owner of part of it. The shares might be equal or unequal. Since 1925, it has been impossible for a legal estate to be held as a tenancy in common sections 1(6) and 34 of the Law of Property Act 1925. Joint owners must hold the legal estate as joint tenants, but their beneficial interests may be held either as joint tenants or as tenants in common. This was intended to simplify conveyancing. They do not need to know "and are not entitled to know" whether the proprietors of the legal estate hold on trust for themselves as beneficial joint tenants, or as beneficial tenants in common, or on trust for other persons altogether. Furthermore, if one or more of the joint proprietors has died, a purchaser can safely deal with the survivors in the knowledge that the legal estate has passed automatically to them, whatever may be the case with the beneficial interests. If there is only one survivor, then one or more additional trustees must be appointed so that the beneficial interests can be overreached in favour of a purchaser. The appointment of one or more additional trustees will trigger compulsory first registration if the legal estate is an unregistered freehold estate or an unregistered leasehold estate with more than seven years to run. See *The new trustee trigger and practice guide 1*: This situation was unusual in 1925; it is now very common indeed. When the number of joint tenants has reduced to one, they are the sole legal and beneficial owner and the trust has come to an end. But a purchaser will not know this unless the equitable title is deduced "the very problem that the legislation was designed to avoid. The choice was therefore either to deduce the equitable title, or to appoint a second trustee purely to give a good receipt for the purchase money. The survivor is deemed, in favour of a purchaser, to be the sole beneficial owner if: Care therefore needs to be taken, in unregistered conveyancing, to include, where necessary, a statement that a sole surviving joint tenant is solely and beneficially interested. The register records the ownership of the legal estate, not the beneficial interests, and the registrar is not affected with notice of a trust section 78 of the Land Registration Act 1925. As far as possible, references to trusts should be kept off the register. A person dealing with the registered proprietors can assume that they have unlimited power to dispose of the estate or charge concerned, free from any limitation affecting the validity of the disposition, unless there is a restriction or other entry in the register limiting their powers, or a limitation imposed under the Land Registration Act section 26 of the Land Registration Act 1925. So, for example, if two or more persons are registered as joint proprietors, a purchaser can safely acquire the legal estate from the survivor of them, unless there is a restriction to the contrary in the register the restriction will normally be Form A "see Form A: With private trusts, the duty of applying for any necessary restrictions falls on the trustees, though a beneficiary may also apply. The registrar is obliged to enter a restriction without application in only one circumstance, though may do so in certain other cases if it appears to be necessary or desirable section 42(1) of the Land Registration Act 1925. The case when the registrar is obliged to enter a restriction is when registering two or more persons as joint proprietors of a registered estate. A Form A restriction must then be entered unless the registrar is satisfied that the applicants hold on trust for themselves as beneficial joint tenants section 44(1) of the Land Registration Act 1925 and rule 95(2) of the Land Registration Rules 1925. The registrar is also obliged to enter restrictions in certain cases involving public or charitable trusts. There are no HM Land Registry forms specifically for registering dispositions to or by trustees. The standard forms prescribed in Schedule 1 of the Land Registration Rules must be used. For example, a transfer of the whole of a registered title to or by trustees must be in form TR1. An application to

register trustees as proprietors of an estate should be made in form FR1 if it is a first registration or form AP1 if it is a disposition of a registered estate, in the usual way. See practice guide 1: From 6 April, two new events that trigger compulsory registration of title to land held under a trust of land were added to the triggers listed in section 4(1) of the Land Registration Act by the Land Registration Act Amendment Order. The deed which transfers the legal estate to a new trustee and any continuing trustees may be the deed of appointment of the new trustee, if it contains an express vesting declaration or one that is implied under section 40 of the Trustee Act or a memorandum executed as a deed evidencing the appointment of a new trustee by a resolution to which section of the Charities Act applies, or it may be a separate conveyance or assignment by deed that is made in consequence of the appointment of a new trustee. Section of the Charities Act applies not only to charities, but also, by section 6, to any institution to which the Literary and Scientific Institutions Act applies, although such an institution will often be a charity in any event. See also Appointment or discharge of trustees by resolution of the trustees. A vesting order under section 44 of the Trustee Act can be made by the High Court or by the County Court to vest land in a new trustee appointed by the court under section 41 of the Trustee Act or out of court. The new trustee trigger also does not apply on the appointment of a new trustee of a settlement under the Settled Land Act. Partition occurs where land in a trust is divided and the separate parts are allotted among the beneficiaries, so terminating the trust as between some or all of the beneficiaries. Partition may take place at common law by agreement between all the beneficiaries, in which case the trustees, who in many cases will be the beneficiaries themselves, will give effect to the partition by transferring the legal estate in the separate parts to the persons entitled by deed. Partition may also occur when trustees exercise their statutory power to partition land under section 7 of the Trusts of Land and Appointment of Trustees Act with the consent of the beneficiaries. Again, the trustees must give effect to the partition by transferring the legal estate by deed. The partition trigger applies to a partition on whatever terms. For example, the partition may include the payment of equality money where a beneficiary receives more than their beneficial entitlement under the former trust. A conveyancer may, however, make an application for first registration on the basis of certified copy deeds and documents only. For information about this see practice guide 1: If your application is not a first registration, we only need certified copies of deeds or documents you send to us with HM Land Registry applications. Once we have made a scanned copy of the documents you send to us, they will be destroyed. This applies to both originals and certified copies. However, any original copies of death certificates or grants of probate will continue to be returned. The standard form restrictions 2. As amended by the Trusts of Land and Appointment of Trustees Act section 25(1) and Schedule 3, paragraph 4, this section reads as follows: If a Form A restriction is registered, it will generally be necessary for a new trustee or trustees to be appointed before land held by a single trustee on a trust of land can be dealt with in such a way that capital money arises. We are obliged to do this by section 44(1) of the Land Registration Act and rule 95(2)(a) of the Land Registration Rules. Section 44(1) of the Land Registration Act reads as follows. Section 27(2) of the Law of Property Act does not affect the right of a sole personal representative as such to give a valid receipt for capital money. Therefore, a Form A restriction will not automatically be entered when registering personal representatives or a sole personal representative as proprietors of land. If there is an existing Form A restriction, however, it will remain in the register. This is because, in that case, the personal representatives are in effect succeeding the deceased as trustees of the trust. For the same reason, we will enter a Form A restriction on first registration when registering the personal representatives of a deceased proprietor who was a sole trustee or unless the survivor of beneficial joint tenants the last surviving trustee. Similarly, section 27(2) of the Law of Property Act does not affect the right of the survivor of beneficial joint tenants to give a valid receipt for capital money. When applying to register joint proprietors of an estate, you should therefore make clear the capacity in which they hold it. See Declaration of trust. If you do not do so, we will enter a Form A restriction by default. We will not enter a Form A restriction in respect of a registered charge. Although a charge can be held on trust, the survivor of the registered chargees is always able to give a valid receipt for the money secured by it section 56 of the Land Registration Act. We will not enter a Form A restriction automatically when registering a sole proprietor. If a sole or last surviving trustee of land applies for first registration, or to register a disposition of a registered estate in their favour, they must at the same

time apply for a Form A restriction rule 94 2 of the Land Registration Rules This is because section 44 1 of the Land Registration Act only applies to joint proprietors. The registrar is not obliged to enter a Form A restriction automatically on registering a sole or last surviving trustee. Section 44 1 of the Land Registration Act also only applies to registered estates in land. It does not apply when two or more persons are registered as proprietors of a rentcharge, manor, franchise or profit a prendre in gross. Nevertheless, if the survivor of them will not be able to give a valid receipt for capital money, a Form A restriction will be needed, and you should apply for it. Although manors can no longer be the subject of first registration, existing registrations of them remain and can be dealt with. Unless the consent of the registered proprietors accompanies the application, the registrar will have to serve notice of the application on them the application will be a notifiable one under sections 45 of Land Registration Act The notice will give them 15 working days in which to object rule 92 9 of the Land Registration Rules The precise wording of this form varied over the years but its final version was as follows. Accordingly, we will treat a restriction in Form 62 as if it were one in Form A. Before 1 January when the Trusts of Land and Appointment of Trustees Act came into force , section 27 2 of the Law of Property Act only applied to estates that were subject to a trust for sale. There may still be estates registered before that were held on trusts that did not include a trust for sale for instance, a constructive or bare trust , and where neither a Form A nor a Form 62 restriction has been entered. Either the trustees or the beneficiaries of such trusts may apply to enter a Form A restriction, and would be well advised to do so. Any such limitation needs to be reflected by a restriction in the register to protect the rights of the beneficiaries. In respect of a registered estate , when a declaration of trust imposes limitations on the powers of the trustees under section 8 of the Trusts of Land and Appointment of Trustees Act Also, in respect of a registered estate , when a change in the trusts on which it is held imposes limitations on the powers of the trustees under section 8 of Trusts of Land and Appointment of Trustees Act On an application for first registration of a legal estate held on a trust of land, when the powers of the trustees are limited by section 8 of the Trusts of Land and Appointment of Trustees Act This applies not only when the legal estate is held by trustees, but also when it is held by the personal representative of a sole or last surviving trustee rule 94 7 of the Land Registration Rules An application by one of two or more trustees satisfies the requirement to apply rule 94 9 of the Land Registration Rules , although such an application should be made as an application by a person with sufficient interest in the making of the entry rule 92 of the Land Registration Rules and be accompanied by evidence of that interest. Where a Form A restriction is required see Form A: Unless the consent of the registered proprietors accompanies the application, the registrar will have to serve notice of the application on them the application will be a notifiable one under section 45 of the Land Registration Act You should not specify the nature of the consents required, or any similarly complex provision in the restriction. The purpose of this is to allow the restriction to reflect the terms of the disposition creating the trust without requiring the registrar to consider those terms or whether they have been complied with. A statutory declaration or statement of truth will only be needed if the conveyancer is unwilling to give a certificate for any reason or if no conveyancer is acting. However, under sections 8 and 18 of the Trusts of Land and Appointment of Trustees Act , the powers of the personal representatives can be limited by provisions contained in the will of the deceased or in a deed of variation or family arrangement. In the absence of a restriction, a purchaser of a registered estate from trustees is not concerned to see that the terms of the will or deed have been complied with section 26 of the Land Registration Act

### 3: Guarding against a Trust's Destruction by Merger | Charles E. Rounds, Jr. - JDSupra

*Trust account under estates code, not an express trust B is a beneficiary of K, between O and the bank. B cannot assign, attach or inherit his interest because he doesn't own property.*

Events generating constructive trusts[ edit ] Breach of fiduciary duty[ edit ] In a constructive trust the defendant breaches a duty owed to the plaintiff. The most common such breach is a breach of fiduciary duty , such as when an agent wrongfully obtains or holds property owned by a principal. With the bribe money, he purchased property in New Zealand. His employer, the Attorney-General , sought a declaration that the property was held on constructive trust for it, on the basis of breach of fiduciary duty. The Privy Council awarded a constructive trust. The case is different from *Regal Hastings Ltd v Gulliver* , [5] because there was no interference with a profit-making opportunity that properly belonged to the prosecutor. Supporters of *Lister* suggested that there was no good reason to put the victim of wrongdoing ahead of other creditors of the estate. Property interference[ edit ] In *Foskett v McKeown* [9] a trustee used trust money together with some of his own money to purchase a life insurance policy. Then he committed suicide. The insurance company paid out to his family. The defrauded beneficiaries of the trust sought a declaration that the proceeds were held on constructive trust for them. The House of Lords said that the beneficiaries could choose between either: There is controversy as to what the true basis is of this trust. However, this reasoning has been criticized as tautologous by some scholars who suggest the better basis is unjust enrichment see below. This is because there must be a reason why a new property right is created i. The remedy they obtained was a constructive trust over an insurance payout. Unjust enrichment[ edit ] In *Chase Manhattan Bank NA v Israel-British Bank London Ltd* [10] one bank paid another bank a large sum of money by mistake note that the recipient Bank did not do anything wrong - it just received money not owed to it. Goulding J held that the money was held on constructive trust for the first bank. This remains an area of intense controversy. They arise the moment the relevant conduct breach of duty, unjust enrichment etc. An example is the Australian case *Muschinski v Dodds*. They agreed to make improvements to the property by building a pottery shed for the woman to do arts and crafts work in. The woman paid for part of this. They then broke up. The High Court held that the man held the property on constructive trust for himself and the woman in the proportions in which they had contributed to the improvements to the land. This trust did not arise the moment the woman commenced improvements - that conduct did not involve a breach of duty or an unjust enrichment etc. The trust arose at the date of judgment, to do justice in the case. In *Bathurst City Council v PWC Properties*, the High Court that as constructive trusts are the most severe remedy in cases of breach of fiduciary duty, they should only be imposed when other remedies are inappropriate in providing relief. Usefulness of constructive trusts[ edit ].

## 4: Constructive trust - Wikipedia

*Equitable interest is a broad term that covers an interest which is established through principles of fairness, rather than a legal assignment of ownership. An example of an equitable interest is the one held by a trust beneficiary.*

Commentary Occasionally a court has to re-examine basic principles of trust law. It asked the question: The case came before the court on a preliminary issue and so it does not give final answers the question, but it does provide helpful commentary. And so the case merits a closer look. Al-Sanea, a Saudi Arabian citizen and resident was the legal owner of a number of shares in five Saudi banks, one of which was the appellant, Samba. In the course of six transactions between and , Mr. Al-Sanea agreed in writing to transfer the beneficial ownership in shares to Saad Investments Co. SICL was in liquidation. Al-Sanea transferred all the shares to Samba to discharge personal liabilities he owed towards it. It declares that any dispositions of the property of a company in liquidation and any transfer of shares is void unless the court otherwise orders. The Chancellor ordered that the proceedings be stayed, but the Court of Appeal reversed. Samba appealed that decision. In the lower courts and initially in the Supreme Court, the issue was framed as being whether SICL had equitable proprietary interests in the shares and it seems to have been assumed that if it did those interests were disposed of by Mr. Samba argued that SICL could not have equitable proprietary interests in the shares, since the law of Saudi Arabia, the *lex situs* of the shares, does not recognize such interests. Vautier, [7] and when the beneficiary seeks to trace trust property misapplied by the trustee. On the other hand, if the issue is one as between the beneficiaries and trustees as, for example, when it concerns the management of the trust by the trustee, the beneficiary has only a personal right against the trustee. However, as Lord Mance noted: In this judgment, I am also content, without expressing any view about the appropriate analysis, to proceed on the same basis. *Islington London Borough Council*: The law governing the trust Cayman Islands in this case determined whether the beneficiary enjoyed an equitable proprietary interest, or only a right against the trustee to perform the duties the trust imposes on him. However, the law of the *situs* of the property may also be relevant. In this case that was the law of Saudi Arabia, where the companies were incorporated and the shares were registered. If under the *lex situs* a transfer of property by the trustee to a third party defeats or overrides any equitable interest of the beneficiaries, then the beneficiaries have no valid proprietary or restitutionary claim against the transferee. Lord Mance referred to a number of English cases on this point. Al-Sanea and anyone else, except a transferee who takes a good title by virtue of Saudi law. But in any event, he was opinion that a good argument could be made to the effect that the definition of property in s. What is clear, on any analysis, is that, where a trust exists, the legal and beneficial interests are distinct, and what affects the former does not necessarily affect the latter. Where an asset is held on trust, the legal title remains capable of transfer to a third party, although this undoubted disposition may be in breach of trust. But the trust rights, including the right to have the legal title held and applied in accordance with the terms of the trust, remain. They are not disposed of. They continue to be capable of enforcement unless and until the disposition of the legal title has the effect under the *lex situs* of the trust asset of overriding the protected trust rights. If the trust rights are overridden, it is not because they have been disposed of by virtue of the transfer of the legal title. It is because they were protected rights that were always limited and in certain circumstances capable of being overridden by virtue of a rule of law governing equitable rights, protecting in particular under common law *bona fide* third party purchasers for value. In fact, a trustee who transfers the title to trust property in breach of trust, transfers only the legal title. He cannot transfer the beneficial title, even to a *bona fide* purchaser for value without notice of the trust, for he does not have it. It applies when assets legally owned by a company in liquidation are disposed of and permits the company to recover them, unless the court orders otherwise. But SICL did not need the protection of s. Accordingly, Lord Mance allowed the appeal and declared that there had been no disposition of any rights of SICL for the purposes of s. However, he allowed the parties 16 days to make written submissions, including seeking an order to remit the matter to the High Court to enable an application to save the proceedings by amendment of the pleadings. But the court has left us with tantalizing discussions about the nature of a trust and the rights of beneficiaries. A Course of Lectures, rev, ed.

## TRUSTS AND EQUITABLE INTERESTS pdf

Cambridge University Press, , p. John Murray, , vol. Text, Commentary and Materials, 8th ed. Bishopsgate Investment Trust plc No. GP Noble Trustees Ltd.

### 5: 2d DCA explains Florida's trust-merger doctrine | Florida Probate & Trust Litigation Blog

*In instances where there is an absence of an express or inferred intention to create an interest recognisable in equity, by implication of law (resulting trusts), equitable interests may still arise. Additionally, an equitable interest can also be imposed by the court (constructive trusts).*

### 6: Beneficial interest | Practical Law

*A trust beneficiary can hold either a vested interest or a contingent interest in assets held in a trust. The type of trust interest the beneficiary holds is dependent upon the terms the grantor put in place for the trust when it was created.*

### 7: Equitable Interests |

*Where the property is held on trust, a trustee holds the legal title of the trust property, whereas the beneficiary has the equitable interest in the trust property. Using this structure, the trustee is responsible for managing the trust property (for instance, investing a trust fund in stocks or real estate, as well as paying the relevant.*

### 8: Equitable Interest Law and Legal Definition | USLegal, Inc.

*Al-Sanea breached the trust by disposing of his legal interest in the shares, but he did not dispose of SICL's property, whether that was an equitable proprietary interest or personal rights against the trustee.*

### 9: Irrevocable Trusts and Divorce: Equitable Distribution of the Marital Assets

*equitable interest in the land; the statement means merely that it was the legal owner, and there was no equitable right in anyone to regulate or control the way in which it might exercise the.*

*A Call to Prayer for a Nation at War Malory and interpretation The servant and the water princess 2017 weekly monthly planner Ionic Transport in Hypertension New Perspectives Receiving payment for goods and services Navigant research leaderboard automated driving vehicles Day trading for dummies When people play people Mac, Information Detective, in The Curious Kids digging for answers Forty-five Minutes in China The Golden Compass for Character-Based Decision Making Family Science 371 Dsp with fpgas vhdl solution manual An epystell of ye famous doctor Erasm[us of Rotterdam Merry Town, Missouri Alternating current motors. Understanding television production Contemporary composers Models and modeling Lism hand made baking St. Gregory, monk and pope Appendix v. 7. Book XIX continued Book XX. Practical troubleshooting of electrical equipment and control circuits Objects in Motion Rotor dynamic analysis using ansys Why didnt God let Moses into the Promised Land? Letters from Switzerland, translated by A. J. W. Morrison. 5-minute orthopaedic consult Pediatric surgery Michael J. Morowitz and Michael L. Nance Advances in chemical physics Nature, mother of invention Problem-Based Anatomy Why are babies born deformed? Regulatory Mechanisms of Intracellular Membrane Transport (Topics in Current Genetics) The 12 month millionaire Learn python in a day and learn it well The heavenly intervention Lights by the canal The joys of porcelain Marketing cooperatives*