

PROPERTY

PROFESSOR KRISTELIA GARCÍA

CLASS 18: TRUSTS

Class Outline

1. Spendthrift trusts
2. Fiduciary duties
3. Changed circumstances

- Property ownership can be thought about over time, horizontally (present possessory interests & future interests)
- In order to always know who owns property (i.e. who is responsible for it) and to avoid “dangling” property interests, we always want to pair a present possessory interest with a future interest to equate to a fee simple (conservation of estates)
- For maximum alienability and preservation of information costs, property law requires we keep ownership forms “on menu” (numerus clausus)
- To avoid “dead hand control,” jurisdictions restrict testamentary grants to those that don’t unreasonably restrain alienation (rule against perpetuities or some modified form thereof)
- Alternately, property ownership can be thought of vertically, with more than one party holding an ownership interest at any given time (co-ownership)
- As we move to so-called “Entity Property,” we begin to focus on separations:
 - With Leases, we separate possession from ownership (responsibility)
 - With CICs, we separate ownership from governance (co-ops, condos, HOAs)
 - With Trusts, we will separate ownership from benefit

Trusts

A trust involves three parties: (i) the settlor, (ii) the trustee, and (iii) the beneficiary.

- The settlor (owner of the property, usually in fee simple) conveys property to the trustee, who then manages it as a fiduciary for the benefit of the beneficiary. All three of these parties can be natural or artificial persons (e.g. corporations).

- Beneficiary is sometimes called the “cestui que trust” (“he for whom the trust was created”)

- The trustee holds the “legal” title to the property; the beneficiary is said to hold the “equitable” title.

- The property (or asset) at issue is called the trust res or corpus.

Two forms of trust

1. An inter vivos trust is created by deed of trust during the settlor's life.
2. A testamentary trust is made by will.

Spendthrift Clause

Creditors of the beneficiary of a trust cannot reach the trust assets before they are distributed to the beneficiary.

Broadway National Bank v. Adams

The settlor specifically provides that the corpus and income of the trust are to be “free from the interference or control of his [Charles’] creditors, my intention being that the use of said income shall not be anticipated by assignment.”

Mark Rothko, No. 5/No. 22 (1950)



Cy pres

From the French “cy pres comme possible” =
“as near as possible.”

Wilber v. Owens



WILLIAM B. BAMFORD

Cy pres (cont.)

The traditional test for *cy pres* has two components:

1. First, the court must determine that the settlor of the trust has a general charitable intent.
2. Second, the court must find that the specific charitable intent specified by the settlor is impossible to fulfill, would violate public policy, or has been rendered problematic by changed circumstances.

(New Restatement and Uniform law loosens up cy pres to include wastefulness. Also allows the selection of a similar object rather than more mechanical general charitable intent.)