

Paper on Equity and Trusts with Questions and Answers

Trusts

1. Compare and contrast the trust with the following
 - a) Agency
 - b) Debt
 - c) Power of appointment
 - d) Bailment
 - e) Contracts

Trusteeship involves *onerous obligations*, where a donor retains no responsibility for the property once the gift has been made. Difficulty has been found in providing a comprehensive definition of a trust but various authors have made attempts to define the term trust.

A trust is a relationship which subsists when a person called the trustee is compelled by a court of Equity to hold property, whether real or personal, and whether by legal or equitable title for the benefit of some persons, of whom the trustee himself may be one and who are called *cestui que trust* or beneficiaries, or for some object permitted by law; in such a way that the real benefit of the property accrues not to the trustee, as such, but to the beneficiaries or other objects of the trust.

Definition in Hague Convention on Law of Trusts:

This has been incorporated into English Law by the UK **Recognition of Trusts Act 1987** and under Article 2 of that convention, a trust is defined as follows:-

For the purpose of this convention, the word 'trust' refers to the **legal relationships created – inter vivos or on death – by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.**

A trust has the following characteristics—

- (a) **the assets constitute a separate fund** and are not part of the trustee's own estate;
- (b) **title to the trust assets stands in the name of the trustee** or in the name of another person on behalf of the trustee;
- (c) **The trustee has the power and duty**, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.

A trust can be distinguished from other legal concepts such as bailment, agency, contract, debts, conditions and charges, powers.

Trust & Agency

Agency is a contractual arrangement express or implied, written or verbal whereby one person may act on behalf of another and bind that other as if he or she acted personally. An agency arises where a person called the agent has expressed or implied authority to act on behalf of another called the principal and he consents to do so. The agent is normally treated as an

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Marcel A. Müller



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