

Trust – is the fiduciary relationship between one person having equitable ownership in property and another owning the legal title to such property,, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain power by the latter.

1. Trust implies confidence in a relationship
2. Trust cannot be established in violation of law. (It is founded in equity, thus it cannot co-exist with a violation of the law)

Trust vs.

Bailment – bailee has possession of the property but no legal title.

Donation – involves transfer of both legal and equitable title (except gift in trust).

A beneficiary of a trust can demand performance of an obligation without having formally accepted the benefit of the trust in a public document.

Contract – is a legal obligation, which obligation may or may not be fiduciary in character.

Debt – creditor has merely a personal claim against the debtor.

Persons involved in the creation of trust

1. Trustor
2. Trustee
3. Beneficiary/ *cestui que trust*

Subject-matter of a trust may be any property of value – real, personal, funds, or money or choses in action.

It may include undivided, future or contingent interest, but it should not be a mere expectancy.

Trustor could be the trustee or beneficiary. He could not be a trustee and beneficiary at the same time.

It is not necessary that the beneficiary be named or identified at the creation of a trust (i.e.. charitable trust).

Classification of Trust

By Creation

1. **Express** – One which came into existence only by the execution of an intention to create a trust by the parties.
2. **Implied** – one which comes into being by operation of law:
 - a. **Resulting** – one in which the intention to create a trust is implied or presumed in law.
 - b. **Constructive** – one imposed by law irrespective of, and even contrary to, any such intention for the purpose of promoting justice, frustrating fraud or preventing unjust enrichment.

Effectivity

1. **Testamentary** – to take effect upon the trustor's death.
2. **Inter vivos** – effective during the owner's life.

Revocability

1. **Revocable** – can be revoked by the trustor.
2. **Irrevocable** – may not be terminated during the specified term of the trust.

Elements of Express Trust

1. A competent trustor and trustee;
2. An ascertainable trust res; and
3. Sufficiently certain beneficiaries.

“Consideration is not required to establish trust”

Termination of Express Trust

1. Expiration of period fixed
2. Accomplishment of purpose
3. Mutual agreement of beneficiaries
4. Exercise of power to terminate – the terms of trust deed may provide who can terminate, it could either by the trustor, trustee or someone else.

Express trust concerning immovable or interest therein may not be proved by parol evidence (**NCC 1443**).

It can, however, be waived, by the failure of the opposing party to object when a parol evidence concerning a trust of an immovable or interest therein is being presented in court.

Except for immovable or interest therein, express trust can be created by writing, deed, will or oral declaration. No particular words are required or essential for the creation of an express trust (**NCC 1444**).

Kinds of Express Trust

1. **Charitable Trust**
2. **Accumulation Trust** – accumulate income to be reinvested by the trustee in the trust for the period of time specified.
3. **Spendthrift Trust** – to protect the beneficiary from his imprudent spending habit.
4. **Sprinkling trust** – give the trustee the right to determine the income beneficiaries who should receive income each year and the amount thereof.

In order that a trustee may sue or be sued alone, it is essential that his trust be express, that is a trust created by the direct and positive acts of the parties, by some writing, deed, or will or by proceedings in court.

Art. 1445. No trust shall fail because the trustee appointed declines the designation, unless the contrary should appear in the instrument constituting the trust.

Art. 1446. Acceptance by the beneficiary is necessary. Nevertheless, if the trust imposes no onerous condition upon the beneficiary, his acceptance shall be presumed, if there is no proof to the contrary.

CHAPTER 3 IMPLIED TRUSTS

Art. 1447. The enumeration of the following cases of implied trust does not exclude others established by the general law of trust, but the limitation laid down in Article 1442 shall be applicable.

Art. 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the

latter is the beneficiary. **However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.**

Art. 1449. There is also an implied trust when a donation is made to a person but it appears that although the legal estate is transmitted to the donee, he nevertheless is either to have no beneficial interest or only a part thereof.

Art. 1450. If the price of a sale of property is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, a trust arises by operation of law in favor of the person to whom the money is loaned or for whom it is paid. The latter may redeem the property and compel a conveyance thereof to him.

Art. 1451. When land passes by succession to any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner.

Art. 1452. If two or more persons agree to purchase property and by common consent the legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion to the interest of each.

Art. 1453. When property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated.

Art. 1454. If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him.

Art. 1455. When any trustee, guardian or other person holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong.

Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from who

m the property comes. **Art. 1457.** An implied trust may be proved by oral evidence.

Enumeration of cases of implied trust in Chapter 3 is not exclusive

Other Cases of Implied Trust not cited in Chapter 3

1. Registration in the Torrens System of a land in the name of another but actually owned by another person.
2. Registration of vehicle placed in the name of another, but price thereof is paid by another person.
3. Mortgagee holds in trust for the mortgagor the surplus in the proceeds of the foreclosure sale (excess of what the mortgagor owes from the mortgagee)
4. Agent who willfully violated the trust reposed in him by the principal when he bought for himself the property which he was supposed to buy for the principal.
5. Trust fund doctrine in Corporation Law.
6. Security Deposit under Sections 129, 203 and 414 of the insurance code.

Distinctions between Express and Implied Trust

	Express	Implied
Creation	By direct positive acts of the parties by some writing or deed or will or by words evidencing the intention to create trust	Deductible from the nature of the transaction or imposed by operation of law, independently of the particular intention of the parties.
Proof on Immovables	Cannot be proven by parol Evidence	Can be proven by oral evidence.
Prescription	Imprescriptible unless repudiated by	Laches and prescription can set in (for

	the trustee and such repudiation is made known to the beneficiary.	constructive trust only)
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Implied trust can be converted into an Express Trust

Necessary Elements for the acquisition of the trustee of the Trust Res

1. He has performed open and unequivocal acts of repudiation amounting to an ouster of the cestui que trust or the other co-owners;
2. Such positive acts of repudiation have been made known to the cestui que trust of the other co-owners.
3. The evidence thereon should be clear and conclusive or convincing; and
4. The period fixed by law has prescribed.

Acts that may be considered as Repudiation

1. Filing by a trustee of an action in court against the trustor to quiet title to property, or for recovery of ownership thereof, held in possession by the former;
2. Issuance of the Certificate of Title and in the lapse of more than 20 years, open and adverse possession as owner;
3. Administrator of the property causes the cancellation of the property in the name of the beneficiaries to his name;

For prescriptive period to apply against the person seeking the reconveyance, he must **not** be in possession of the property. If he is in possession, then it will not prescribe for he may wait until his possession is disturbed or his title is attached before taking steps to vindicate his rights.

When prescriptive period begins to run for action for reconveyance of property

1. Constructive Trust – date of registration of the deed or the date of issuance of said new certificate of title of the property which constitutes constructive notice to the public.
2. In case of fictitious sale to avoid foreclosure of mortgage, from the date of

recording of the release of mortgage (Tongoy vs. CA, 123 SCRA 99)

3. If registration under the Torrens System was secured through fraudulent misrepresentation, period is reckoned not from the date of registration but from the discovery of fraud by the actual owner. (Ramos vs. IAC, 175 SCRA 70). Person acting in bad faith in securing title over real property is not entitled for the protection of law for the law cannot be used as shield for frauds (GSIS vs. Santiago, 4141 SCRA 563)

Continuous recognition of a resulting trust precludes any defense of prescription or laches.

If title of the property is already in the hands of an innocent purchaser for value, actual owner can no longer ask for the reconveyance of the land. His only remedy is to file for damages. (Bagayos vs. Guilao, 64 Phil 347; Khemani vs. Heirs of Trinidad, 540 SCRA 83)