

Wills, Trusts,
and Estates

Class 13

Inter-Vivos Trusts – The Irrevocable Life Insurance Trust

- Grantor takes out a policy (usually on her own life) and transfers the policy to the trust
- Grantor makes payments of premiums for the policy
- At grantor's death, the benefit goes to the trust for distribution to the beneficiaries

Inter-Vivos Trusts – The Irrevocable Life Insurance Trust (cont.)

- Purposes:
 - Avoids probate of the grantor's assets since the trust property passes to the trust by "operation of law"
 - Helps to avoid estate tax because the policy is not in the grantor's estate; so there is no estate tax on it
- Drawbacks:
 - Does not allow the grantor freedom to modify or revoke the trust provisions
 - Only relevant for a life insurance policy

Implied (“Resulting”) Trusts

- Creation:
 - Some unanticipated circumstance arises that was not anticipated at the time of the trust’s creation
 - A trust is unenforceable due to a drafting defect
 - Not all of the Trust *res* was disposed of by the trust terms
- Result:
 - A court will determine to whom the money should go (often the heirs of the grantor)

Constructive Trusts

- Designed to prevent unjust enrichment when property is improperly acquired by someone who is not entitled to the property
- That person holds it in “trust” for the original grantor or for whomever is rightfully entitled to that money

Testamentary Trusts

- Definition: Trust created by a Will
 - i.e., credit shelter trusts, QTIP trusts, QDOT trusts etc.
- Same elements to formation as a regular trust; i.e.
 - Intent to create a trust
 - Identification of the parties
 - Existence of trust *res*; *however, note that the res requirement only applies after the death of the testator.*

Testamentary Trusts (cont.)

- “Secret” Trust:
 - Testator intended to create a trust, but phrased it as an outright gift; extrinsic evidence can be used to show that it was supposed to be a trust.
- “Semi-secret” Trust:
 - Language is there to create a testamentary trust, but there is no names beneficiary
 - Example: “I direct that my assets be held by my trustee for the benefit of my beneficiaries”
 - Rule: Goes into trust to be held for testator’s heirs

Quiz Time!

Changing or Revoking a Trust

- **Settlor**

- Can modify or revoke a revocable trust at any time for any reason
- Cannot revoke or modify an irrevocable trust
- Some irrevocable trusts give Settlor the power to modify the trust;
but if this power is too wide, it might mean that the trust res is still in the Settlor's estate for estate tax purposes!

- **Trustee**

- No power to do either of these unless the trust specifically allows this

Changing or Revoking a Trust (cont.)

- **Beneficiary/ Beneficiaries**
 - Can revoke a trust (demand that it be terminated) IF...
 - All beneficiaries join in the request to the trustee or in the suit petitioning the court to modify or terminate the trust; and
 - The proposed modification or the termination will not defeat a material purpose of the settlor in creating the trust.