

Wills, Trusts,
and Estates

Class 12

Trusts – General Principles

- **Parties involved** (one person or entity could be more than one of the parties)
 - **Grantor** (aka Settlor) creates the trust and gives property to the trust
 - **Trustee** manages the trust assets
 - **Beneficiary** receives the trust assets or benefits from the trust assets
- Split of title to the property
 - “**Equitable**” title belongs to the beneficiary
 - “**Legal**” title belongs to the trustee

Trusts – General Principles (cont.)

- Elements of a Trust:
 - **Intent** to give property to one person to hold for another (must be clearly expressed)
 - There must be a trust “*res*” (property)
 - **Naming** of the parties (Trustee must be competent to administer the trust)
 - **Valid trust purpose** (i.e., must not be against public policy or violating of a rule such as the Rule Against Perpetuities)

Quiz Time!

Inter-Vivos Trusts – The Revocable “Living” Trust

- Calls for the grantor’s property to be held during his life and distributed after his death
- Can be revoked or modified by the grantor at any time during the grantor’s lifetime
- Settlor is usually the trustee during his lifetime and after death, someone else takes over as trustee to manage or distribute the assets
- Assets are often distributed at death, but can be held, especially where there are minor child beneficiaries
- Is often accompanied by a will that “pours over” all the testator’s assets into this trust

Inter-Vivos Trusts – The Revocable “Living” Trust (cont.)

- Purposes:
 - Avoids probate of the grantor’s assets since the trust property passes to the trust by “operation of law”
 - Allows the grantor to create one big instrument to handle the administration of all of her assets
- Drawback:
 - It does nothing to take the property out of the grantor’s estate, so it does not help at all to avoid paying estate tax

Inter-Vivos Trusts - The Irrevocable Trust

- Calls for the grantor's property to be held during his life and distributed after his death
- Cannot be revoked or modified by the grantor at any time
- Grantor can be the trustee during his or her lifetime, but can't have too much power over the assets

Inter-Vivos Trusts - The Irrevocable 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 whatever the grantor gives to the trust during lifetime is no longer part of her estate (because the trust is irrevocable)
 - Allows the grantor to create one big instrument to handle the administration of all of her assets
- Drawbacks:
 - Does not allow the grantor freedom to modify or revoke the trust provisions
 - Gifts to the trust are not eligible for the gift tax exclusion unless the trust has Crummey* powers that are over the annual exclusion

**Crummey v. Commissioner*, 397 F.2d 82 (9th Cir. 1968)