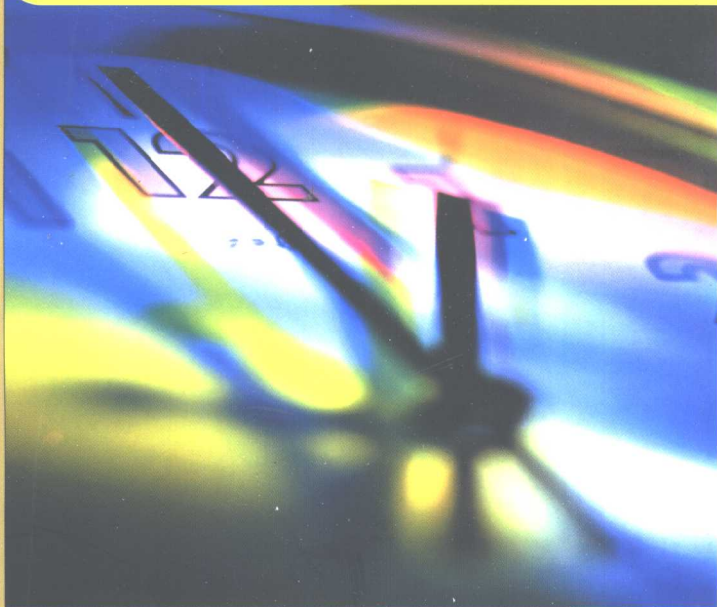


最新不列颠法律袖珍读本 (英汉对照)



信托法

Trusts



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信 托 法

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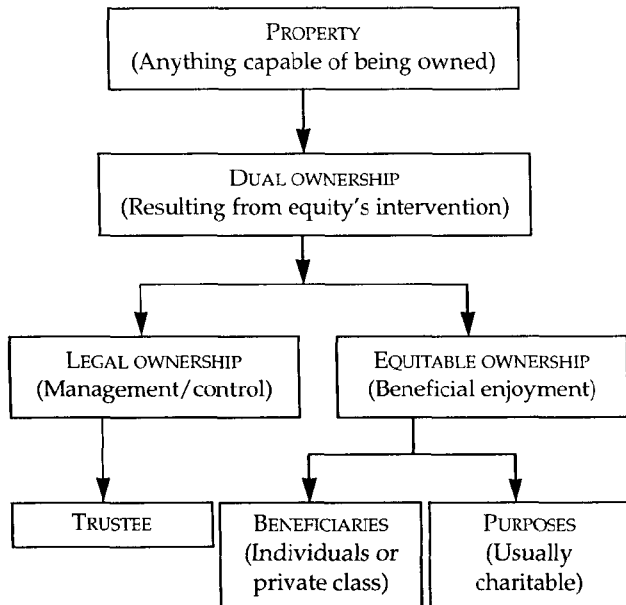
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最新不列颠法律袖珍读本(英汉对照)系列丛书之原本是英国卡文迪什出版有限公司(Cavendish Publishing Limited)最新推出的,我们采用英汉对照的形式出版,以利于读者研习法律及法律专业英语之用。该读本系列包括了对不列颠法律的广泛介绍,其中每一本都是研习一个专业科目的完整的袖珍指南。其精致的文本、原版的法律专业英语、规范的专业汉译以及简明的格式、友好的界面使得该读本系列成为读者研习各个学科的基本理论和最新研究成果,尤其是学习纯正的法律英语的理想帮手。

1 The nature and types of trusts

A trust is a relationship which arises where one person (the trustee) is compelled in equity to hold property for the benefit of another (the beneficiary) or for a purpose permitted by law.

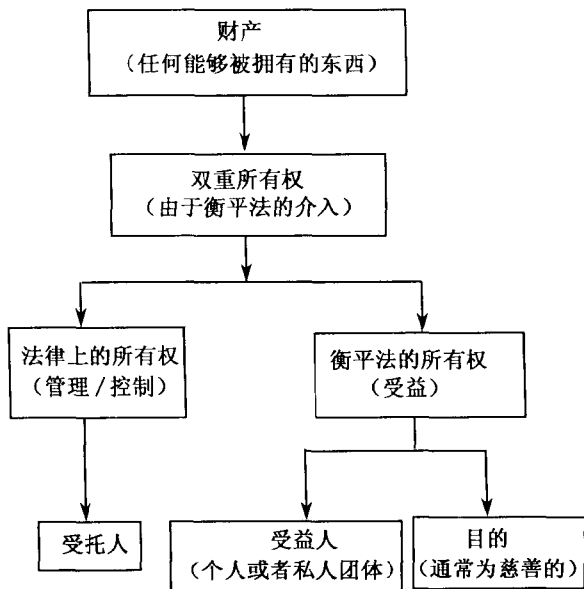
THE ANATOMY OF A TRUST



1 信托的性质与类型

信托是一个人(受托人)在衡平法上被强制为另一个人(受益人)的利益或者为一个法律所允许的目的而持有财产的关系。

信托的分解图



Key elements of the trust

Property

Trusts are inextricably linked to property. As Lord Browne-Wilkinson emphasised in *Westdeutsche Landesbank Girozentrale v Islington LBC* (1996), 'in order to establish a trust, there must be identifiable trust property'. Anything that is capable of being owned may constitute trust property.

Equitable origin of the trust

From the outset, common law courts refused to recognise the rights of the beneficiary (B) against the trustee (T). By contrast, the Court of Chancery has always upheld these rights by imposing an equitable obligation on T.

Where a trust is for individuals or a private class of persons, this entitles them to enforce the trustee's obligations.

Where the trust is for a purpose which is beneficial to the public, it is enforceable by the Attorney General as a *charitable trust*. But, if the intended purpose is non-charitable, the trust can be enforced only in exceptional cases.

Duality of ownership

Under the common law, once trust property is vested in T, he is deemed to be the legal owner.

Equity does not dispute T's legal ownership but recognises B as the equitable owner of the trust property. In substance, this means that T is responsible for administering the trust property while B enjoys the benefits flowing from the property.

As Lord Browne-Wilkinson has pointed out in the *Westdeutsche* case, the most notable consequence of such

信托的基本要素

财产

信托不能与财产相分离。正如布朗-维尔克逊爵士在 Westdeutsche Landesbank Girozentrale 诉 Islington LBC 案 (1996) 中所强调的:“为了设立信托,必须有确定的信托财产。”任何能够被拥有的东西都可以作为信托财产。

信托的衡平法起源

从一开始,普通法院就拒绝承认受益人(B)依赖于受托人(T)获得的权利。相反,衡平法院总是通过对受托人施加衡平法上的义务来支持这些权利。

当信托是为个人或者私人团体设立时,这授权他们强制受托人履行义务。

当信托是为一个对公众有益的目的设立时,它被检察长当做慈善信托强制实施。但是,如果意定的目的是非慈善的,则该信托仅在特殊情况之下才可能被强制实施。

双重所有权

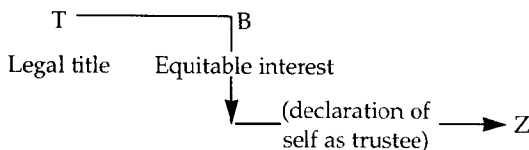
依据普通法,一旦将信托财产授予给受托人,受托人即被认定为法律上的所有者。

衡平法并不怀疑受托人在法律上的所有权,而是承认受益人成为衡平法上的信托财产的所有者。实际上,这意味着受托人负有管理信托财产的责任,而受益人享受该财产所生利益。

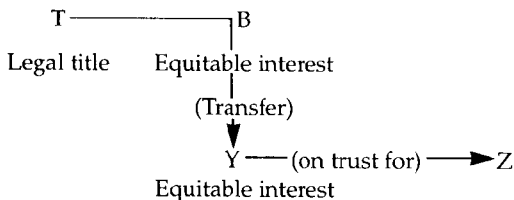
正如布朗-维尔克逊爵士在 Westdeutsche 一案中所指出的,这种衡平法上的所有权最显著的作用是:

equitable ownership is that, 'once a trust is established, as from that date of its establishment, the beneficiary has, in equity, a *proprietary interest* [author's emphasis] in the trust property'. The hallmarks of this interest are that:

- it is capable of being disposed of or acquired like any other interest in property;
- it may itself become the subject matter of a trust; for example, if T holds property on trust for B, B may declare himself a trustee of the interest for the benefit of Z;



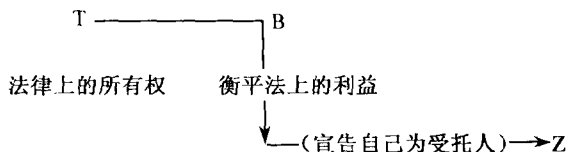
In the alternative, B may choose to transfer his interest to Y on trust for Z.



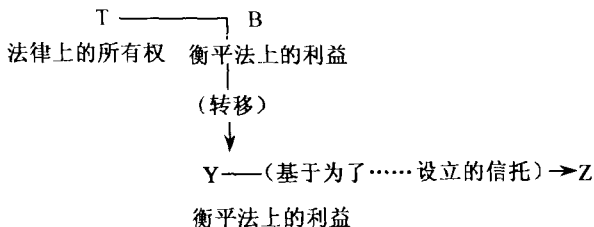
- it is enforceable not only *in personam* against the trustee but *in rem* against the whole world except a *bona fide purchaser for value without notice*. For example, if T wrongfully transfers trust property to A, B has a personal claim against T for mismanaging the trust while his interest in the property continues to subsist against A.

“信托一旦设立,并从它设立时起,在衡平法上受益人就已经对信托财产享有所有者的利益(作者的强调)”。这种利益的特点是:

- 它能像任何其他财产利益一样被处分或者取得;
- 它能使自己成为一项信托的标的物;例如,如果 T 基于 B 设立的信托持有财产, B 可以宣告自己为该利益的受托人而为 Z 谋取利益;



可供选择的是, B 可以以为 Z 设立信托的方式而将其利益转移给 Y。



- 它不仅在对人方面有对抗受托人的强制力,而且在对世方面有对抗全世界的强制力,除非一个善意的购买者不注意而购买了财产。例如,如果 T 错误地将信托财产转移给 A, B 有反对 T 错误管理信托的权利,同时 A 无权享受该财产所生利益。

Classification of trusts

Public trusts and private trusts

PUBLIC TRUSTS		PRIVATE TRUSTS	
Type of trust/gift	Enforceability	Type of trust/gift	Enforceability
(1) Trust for specified charitable purpose	Enforceable by AG	(1) Trust for persons	Enforceable by beneficiaries
(2) Donations to charitable bodies	Enforceable by AG	(2) Trust for non-charitable purposes	Not ordinarily enforceable but may be upheld if for upkeep of tombs/pets and trustee is willing
		(3) Gift to unincorporated non-charitable body	Depends on whether it is construed as being on trust for its purposes or a gift to its members

Public or charitable trusts

A trust which promotes the well-being of the public by relieving poverty, advancing education, advancing religion or serving some other purpose beneficial to the community is enforceable by the Attorney General as a charitable trust.

Private trusts

A trust which is essentially for the benefit of individuals or a specified group of persons is enforceable by such beneficiaries as a private trust.

Difficulties arise where a trust is created not for the benefit of ascertainable persons but for a stated purpose which is

信托的类型

公益信托与私益信托

公益信托		私益信托	
信托/赠与的类型		强制实施	
(1) 为特定的慈善目的的信托	由 检 察 总 长 强 制	(1) 为人的信托	由受益人强制
(2) 对慈善团体的捐赠	由 检 察 总 长 强 制	(2) 为非慈善目的的信托 (3) 对松散的非慈善团体的赠与	通常不具有强制性, 但如果为保护坟墓/ 宠物且受托人愿意可以被强制 取决于它是被解释成为其目的而设立信托还是对其成员的赠与

公益的或者慈善的信托

一项信托, 其能通过减少贫困、改善教育、增强信仰或者服务于对社会有益的其他目的而增加公共财富, 由检察总长当做一种慈善信托强制实施。

私益信托

一项信托, 其基本上是为个人或者一个特定群体的利益的, 由私益信托的受益人强制实施。

当一项信托不是为确定的人们的利益而是为一个非慈善的固定目的设立时, 就会产生困难。通常的规则是既然没有

not charitable. The general rule is that the trust will fail since there are no beneficiaries to enforce it. However, an exception is made in the case of trusts for the upkeep of pets or the maintenance of graves and tombs which have been held to be valid trusts of imperfect obligations: see, for example, *Re Dean* (1889) and *Re Hooper* (1932).

The problem of whether a trust/gift is for a purpose or for persons is particularly acute where property is given to an unincorporated association which does not have charitable purposes. Such a gift may be construed as giving rise to a trust for the association's purposes, in which case it is liable to fail as a non-charitable purpose trust. Alternatively, the gift may be construed as one to the members who collectively make up the association with the result that it will not fail for want of beneficiaries. As a rule, however, the individual members do not thereby acquire immediate distributive shares in the property given; rather it will be treated as an accretion to the association's assets to be applied for the benefit of the members. See *Leahy v AG (NSW)* (1959); *Neville Estates v Madden* (1962); and *Re Recher's WT* (1972).

Express trusts and trusts imposed on other grounds

Express trusts

An express trust arises as a result of a declaration of trust by a person in whom property is vested, for example, where:

- S, the owner of Blackacre, declares himself trustee of the property for B;
- S, the owner of Blackacre, conveys it to Z on trust for B (these are *inter vivos trusts* and S is a *settlor*); or where
- T leaves Blackacre in his will to Z with directions to hold it on trust for B (this is a *testamentary trust* and T is the *testator*).

受益人去强制实施,则信托失败。然而,有一个例外,即为抚养宠物或者维护坟墓设立的信托,其被认为是完全强制的有效信托(参见,例如,Dean(1889)案和 Hooper(1932)案)。

当财产被给予一个没有确定目的的分散团体时,一项信托/赠与是为一个目的还是为人的问题特别突出。这样的赠与可能被解释成产生一项为该团体的目的的信托,在这种情况下,它作为一种没有确定目的的信托易于失败。可以选择的是,这种赠与可以被解释为一项对共同组成该团体成员们的信托,结果因为受益人的需要它将不会失败。然而,作为一种规则,单个成员不能因此立即获得在被给予的财产中可供分配的利润;相反,它被当做为成员们利益的团体财产的增加值(参见 Leahy 诉 AG(NSW)案(1959); Nevitte Estates 诉 Modden(1962)案和参见 Recher's WT 案(1972))。

明示信托和由其他理由强制成立的信托

明示信托

宣称将财产转移给一个人的信托,即成立一项明示信托。例如,当:

- S,黑土地的所有者,宣称自己是为 B 的利益的该项财产的受托人;
- S,黑土地的所有者,基于为 B 设立的信托将该项财产转让给 Z(这些是生前信托,S是委托人);或者当:
- T在遗嘱中将黑土地留给 Z,指示其为 B 利益的信托持有该项财产(这是遗嘱信托,T是委托人)。

Trusts imposed by equity on other grounds

There are numerous instances where equity will compel one party to hold property on trust for another even though a trust has not been formally declared. A trust imposed in such circumstances may be a *resulting* or *constructive* trust.

Resulting trusts

A resulting trust arises where B transfers or directs the transfer of property to which he is beneficially entitled to T in circumstances where equity deems it appropriate that T should hold the beneficial interest on trust for B. Such a trust may be a *presumed* resulting trust or an *automatic* resulting trust: see *Re Vandervell's Trust (No 2)* (1974).

Constructive trusts

In general terms, the constructive trust is the residual category of trust. Such trusts have, over the years, been imposed in a wide variety of divergent situations in which the courts have found it necessary to compel a person to hold property for the benefit of another in the interests of justice and good conscience.

The following are examples of the types of situations in which the courts have been prepared to impose constructive trusts:

- where a fiduciary misappropriates property entrusted to him or has made unauthorised profits;
- where a third party knowingly receives trust property or is an accessory who dishonestly facilitates the trustee's breach of trust;
- where a statute enacted to prevent fraud is fraudulently used by one person to enrich himself at another's expense; or