A trust is the legal relationship between one person, the trustee, having an equitable ownership or management of certain property and another person, the beneficiary, owning the legal title to that property. The beneficiary is entitled to the performance of certain duties and the exercise of certain powers by the trustee, which performance may be enforced by a court of equity.

From a legal point of view, a trust can be said to be a kind of arrangement including three parties, namely,

The Author of the Trust – The person who creates the Trust.

The Trustee – The person who accepts the responsibilities of the Trust.

The Beneficiary – The person/persons for whose benefit the Trust is created.

**What is the objective of creating a Trust?**

A trust is generally created for the benefit of a group of people/persons. For example:

1. There exists certain movable and immovable property of an individual. The Individual has children, but the children, for the time being, are unable to maintain such property.

The father wants to create a mechanism by which the benefits of his property are properly enjoyed by his children as well as the property is maintained. In such a situation, the Father may choose to create a Trust for his children. Here, the Father would be the Author, a trusted person who the Father wants to appoint for delivering the benefits and maintaining the property, such person can be the trustee, and the children would be the beneficiaries.

2. There is a wealthy senior citizen, who wants to set up an institution for the welfare of the poor and needy. Here, such a person may create a trust for charitable purposes and appoint an appropriate person for being the trustee.

 In such a case, the beneficiaries would be the poor and needy people of the society.

3. A Mutual fund is also a Trust, where generally the trustee is an artificial person, i.e. a Company.

4. In case of debenture issue by a Company, under certain conditions provided for under the Companies Act, a debenture trust is required to be formed and a Debenture trustee is required to be appointed.

**According to section 3 of the Trust Act, 1882:** A “trust” is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner: the person who reposes or declares the confidence is called the “author of the trust”: the person who accepts the confidence is called the “trustee”: the person for whose benefit the confidence is accepted is called the “beneficiary”: the subject-matter of the trust is called “trust-property” or “trust-money”: the “beneficial interest” or “interest” of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the “instrument of trust”:
a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a “breach of trust”.

**Classification**

1. Public and Private Trusts
Private trust is a trust created for the benefit of individuals other than a public or charitable purpose. It is created for the financial benefit of one or more designated beneficiaries rather than for the public benefit.

A public trust is one which benefits the public at large or a considerable portion of the public; for example a charitable trust.

2. Simple and Special Trusts
A simple trust, also known as a bare trust, is one to which the trustee does not have to do anything other than ensure that the trust property is given to the named beneficiary within the time frame specified by the trust. The trustee has no other duties, unlike with other kinds of trusts.

A special trust requires a trustee to actively execute a settlor’s instructions. A special trust varies from a simple trust in that these actions can include selling the trust property and using the proceeds to pay off debts or investing cash that is part of the trust in a particular manner.

3. Express Trusts (Declared Trust)

Express trusts are created by a settlor, who transfers property to a trustee for a valid trust purpose. The trustee then distributes the trust property to a beneficiary pursuant to the terms of the trust. The following definitions elaborate on the essential components of an express trust.

Express trusts may take a number of different forms. The most common categories of express trusts are living trusts, testamentary trusts, revocable and irrevocable trusts, fixed trusts, and discretionary trusts.

i. Living Trusts
A living trust, or inter vivos trust, is created for the benefit of another during the settlor's life.

ii. Testamentary Trusts
Testamentary trusts are created by a settlor's will. A settlor's property is therefore transferred into the trust when the settlor dies.

iii. Revocable Trusts
A revocable trust allows the settlor to retain sole control of the trust. The settlor can withdraw funds from the trust, or alter or cancel the trust at any time.

iv. Irrevocable Trusts
The trustee of an irrevocable trust is given sole control over the trust property. Typically, the trust will not come to an end until the trust purpose is fulfilled. The trust may be altered or revoked before this time only with the consent of the trustee and all beneficiaries.

v. Fixed Trusts
Beneficiaries to a fixed trust receive trust property on a specific schedule set forth by the settlor. The trustee of a fixed trust has little or no discretion to distribute trust property.

vi. Discretionary Trusts
A discretionary trust gives the trustee the power to choose how and when, if at all, to distribute trust property to beneficiaries.

4. Implied Trust

An implied trust is a financial arrangement that has the characteristics of a trust without the formalities establishing one. An implied trust may not be expressly defined as a trust in a will or other legal document, rather a court determines that a trust agreement exists by looking at the nature of the arrangement the parties have made. There are three types of implied trusts: statutory trusts, resulting trusts, and constructive trusts.

i. Statutory Trusts.

A statutory trust is a trust that arises by operation of law. For example a statutory trust can arising in case of an intestacy. In which case property will be held on trust for the person entitled to it.

A statutory trust may involve a trustee operating a business, conducting a professional activity, or managing a real property. All of these generate income for the beneficiaries.

ii. Resulting Trusts
A resulting trust arises when an express trust fails. The person who currently holds the property becomes a trustee and is obligated to return the trust property to the settlor. Resulting trusts work on a principle of "common intention". This is the idea that a resulting trust is a mix of the settler's intention, and the trustee's knowledge that he is not intended to be the beneficiary.

In ***Carreras Rothmans Ltd v Freeman Mathews Treasure Ltd, [1985] Ch 207*** Gibson J expressed the principle as:
The principle in all these cases is that the equity fastens on the conscience of the person who receives from another property transferred for a specific purpose only and not, therefore, for the recipient's own purposes, so that such a person will not be permitted to treat the property as his own or to use it for other than the stated purpose...if the common intention is that property is transferred for a specific purpose and not so as to become the property of the transferee, the transferee cannot keep the property if for any reason that purpose cannot be fulfilled.

iii. Constructive Trusts
A constructive trust is a remedy to a party improperly benefiting from an asset at the expense of a proper beneficiary that arises when a party has accidentally, mistakenly, or dishonestly received title to or possession of assets that belong to a beneficiary. Typically, a court recognizes that a constructive trust exists so it can order the first party to give the assets and any monies made from the assets to the beneficiary.

For example, say a father gives his daughter a real property to sell for the benefit of his grandson, but the daughter does not sell the property for 10 years because she cannot get a good price for it and eventually decides to keep the property for herself and rent it out for profit. If the grandson takes his mother to court, the court would likely find that the property and the rental profit was being held in a constructive trust for the grandson despite no mention of that type of distribution from the father's original intent. Constructive trusts exist to ensure beneficiaries are not deprived of assets intended for them.

iv. Precatory Trust
It is a way in which one can leave a sum of money to an individual (usually his child or grandchild), but specify exactly how you want that money to be spent. This is a great way of leaving money to someone so that it has a valuable purpose like to pay university fees.

A Precatory Trust doesn’t just apply to money, however. You can also use it to dictate who should receive what particular items, using a letter of wishes to say what you’re leaving to whom and why. This can be changed regularly, without actually changing the content of your Will.

Care must be taken when preparing a letter of wishes, so that the wording is in no way ambiguous and your express wishes are clear. You should indicate that you definitely want to create a trust, name the asset you want to distribute and state who to and why.

v. Secret Trust:

In the past, secret trusts were often used to leave property to a mistress or children born outside the marriage. Today, secret trusts are used to provide property to beneficiaries whose interests oppose the interests of those receiving property through a will. A secret trust can lead to intense, long-lasting lawsuits between the two groups of beneficiaries.