

---

CASES AND TEXT ON THE

# LAW OF TRUSTS

NINTH EDITION

*by*

the late

**GEORGE GLEASON BOGERT**

James Parker Hall Professor of Law, Emeritus  
The University of Chicago

**DALLIN H. OAKS**

formerly

President, Brigham Young University  
and Professor of Law in its  
J. Reuben Clark Law School

**H. REESE HANSEN**

Howard W. Hunter Professor of Law  
Brigham Young University  
J. Reuben Clark Law School

**STANLEY D. NEELEMAN**

Terry L. Crapo Professor of Law, Emeritus  
Brigham Young University  
J. Reuben Clark Law School

FOUNDATION PRESS

2012



THOMSON REUTERS™

---

# TABLE OF CONTENTS

PREFACE TO THE NINTH EDITION.....	iii
TABLE OF CASES.....	ix

<b>PART I. THE CREATION OF TRUSTS.....</b>	<b>1</b>
--	----------

---

## Chapter

<b>1. Grantor Capacity and Trust Intent .....</b>	<b>2</b>
A. Trust Classifications.....	2
B. Mental Capacity Required to Create a Trust .....	2
C. Intent Required to Create a Trust .....	6
D. Savings Account Trusts .....	20
<b>2. Trust Property .....</b>	<b>23</b>
A. Introduction.....	23
B. Future Property.....	24
C. Debts as Trust Property.....	28
D. Trusts in Bank Assets.....	37
E. Trust Doctrines in Bank Collection and Remittance .....	38
<b>3. Trustee .....</b>	<b>39</b>
A. Introduction.....	39
B. Acceptance of the Trusteeship.....	48
C. Doctrine of Merger.....	52
D. Changes in the Trustee.....	58
E. Arrangements for Minors and Incapacitated Adults .....	63
<b>4. Beneficiary.....</b>	<b>66</b>
A. Introduction.....	66
B. Identifiable Beneficiaries.....	66
C. Charitable Purpose.....	75
D. The Power of Designation: Absolute Gift, Power of Appoint- ment, or Trust? .....	78
E. The Honorary Trust.....	80
F. Effect of Disclaimer by the Beneficiary.....	82
G. Incidental Benefits of a Trust .....	84
<b>5. Nature of the Beneficiary's Interest.....</b>	<b>87</b>
A. Introduction.....	87
B. Transfer of the Beneficiary's Interest.....	87
C. The Statute of Uses and Passive Trusts .....	96
D. The Illinois Land Trust.....	98
<b>6. Formalities for Creation of Inter Vivos Trusts .....</b>	<b>104</b>
A. Introduction.....	104
B. Declaration of Trust.....	104
C. Trusts Created by Transfer of Property.....	106

## Chapter

<b>7. Statute of Frauds</b> .....	115
A. Introduction .....	115
B. Application of the Statute .....	116
C. Satisfying the Statute .....	118
D. Effect of Noncompliance .....	123
E. The Effects of the Parol Evidence Rule .....	126
<b>8. Wills Acts</b> .....	128
A. Introduction .....	128
B. Inter Vivos or Testamentary Transfer? .....	129
C. Effect of Retained Powers .....	135
D. Incorporation by Reference .....	141
E. Facts of Independent Significance .....	142
F. Pour-Over Wills .....	142
<b>9. Spendthrift and Related Trusts</b> .....	144
A. Introduction .....	144
B. Grantor Trusts With Spendthrift Provisions .....	149
C. Variations on the Validity of Spendthrift Trusts .....	153
D. Self-Settled Asset Protection Trusts .....	157
E. Support and Discretionary Trusts .....	158
F. Spendthrift Trusts and Eligibility for Public Assistance .....	162
<b>10. Charitable Trusts</b> .....	164
A. Introduction .....	164
B. Public Benefit .....	165
C. Charitable Purpose .....	175
D. The Problem of Partial Invalidity .....	185
E. Gifts to Charitable Corporations and Foundations .....	186
F. Enforcement of Charitable Trusts .....	189
<b>11. Resulting Trusts</b> .....	193
A. Introduction .....	193
B. Express Trust Res Proves Excessive .....	193
C. Failure of Express Trust .....	194
D. Purchase-Money Resulting Trust .....	195
<b>12. Constructive Trusts</b> .....	211
A. Introduction .....	211
B. Wills Act and Constructive Trusts .....	214
C. The Statute of Frauds and Constructive Trusts .....	223
D. Specific Restitution .....	234
<b>13. Illegal Trusts</b> .....	237
A. Introduction .....	237
B. Rights of Parties on Creation of an Illegal Trust .....	241
C. Discriminatory Trust Provisions .....	254
D. Issues Regarding Trusts in International Law .....	264
<b>14. Future Interests Rules</b> .....	267
A. Remoteness of Vesting .....	267
B. Rule Against Undue Suspension of Power of Alienation .....	269
C. Permissible Duration of Private Trusts .....	270
D. Limitations on Trusts to Accumulate Income .....	272
E. Future Interest Rules: Charitable Trusts .....	273

<b>PART II. ISSUES IN TRUST ADMINISTRATION</b> .....	275
<b>Chapter</b> .....	-
<b>15. Initiating, Safeguarding, and Defending the Trust</b> .....	276
A. Acceptance and Qualification .....	276
B. Obtaining Trust Property and Setting up the Trust .....	276
C. Safekeeping and Preserving Trust Property .....	279
D. Trustee's Duty to Defend the Trust .....	282
<b>16. Standard of Care and Investments</b> .....	284
A. Standard of Care .....	284
B. The Trustee's Duties as to Investments .....	286
C. Noneconomic Considerations in Trust Investment .....	312
<b>17. Trustee Administrative and Dispositive Powers</b> .....	314
A. Introduction .....	314
B. Nature and Extent of Implied Powers .....	314
C. Limitations on Express and Implied Powers .....	318
D. Deviation from Express Limitations .....	334
E. Payments and Distributions to Beneficiaries .....	336
<b>18. Delegation to Agents and Co-Trustees</b> .....	340
A. Introduction .....	340
B. Delegation to Co-Trustee .....	341
C. Delegation to Third Parties .....	347
<b>19. Duty of Loyalty—Self-Dealing</b> .....	353
A. Introduction .....	353
B. Loyalty .....	354
C. Exceptions Based on Policy Considerations .....	368
<b>20. Contract and Tort Liability</b> .....	379
A. Introduction .....	379
B. Contract Liability .....	380
C. Creditors' Access to Trust Property .....	384
D. Beneficiary's Liability .....	390
E. Trustee's Liability Arising From Torts or Property Owner- ship .....	392
F. Charitable Immunity in Tort .....	406
<b>21. Allocation of Burdens and Benefits to Principal or In-     come</b> .....	408
A. Introduction .....	408
B. Rights of Successive Beneficiaries to Corporate Distributions .....	409
C. Trust Investments and the Trustee's Duty of Impartiality .....	416
D. Allocation of Receipts From Wasting Assets .....	418
E. Other Circumstances Requiring Apportionment of Receipts .....	437
F. Trustee's Discretionary Power to Allocate Receipts and Dis- bursements .....	439
<b>22. Records, Accounting and Fees</b> .....	443
A. Introduction .....	443
B. Duty to Maintain Adequate Records .....	444
C. Effect of Provision Relieving Trustee of Duty to Account .....	447
D. Effect of Decree Approving Accounts .....	451
E. Effect of Beneficiary's Approval or Failure to Object .....	457
F. Trustee Compensation .....	460

<b>Chapter</b>	
<b>23. Alteration of Trusts by the Court—Deviation and Cy Pres</b>	<b>466</b>
A. Introduction	466
B. Scope and Application of the Deviation Doctrine to Private Trusts	467
C. Scope and Application of the Cy Pres Doctrine to Charitable Trusts	471
<b>24. Alteration, Revocation, or Termination by the Parties</b>	<b>500</b>
A. Introduction	500
B. Settlor's Power to Revoke and Amend	501
C. Termination by Court	508
D. Modification or Termination by Consent of Beneficiaries	512
E. Trust Protectors	518
F. Settlement of Disputes	519
G. Trustee's Duties Following Termination of Trust	522
<b>PART III. ENFORCEMENT OF TRUSTS</b>	<b>525</b>
<b>Chapter</b>	
<b>25. Remedies Against the Trustee</b>	<b>526</b>
A. Introduction	526
B. Decree to Carry Out the Trust	527
C. Injunction or Setting Aside Wrongful Acts	529
D. Damages	529
E. Removal of Trustee	538
F. Advice and Instruction by the Court	548
<b>26. Remedies Involving Trust Property</b>	<b>550</b>
A. Introduction	550
B. Tracing	550
C. Subrogation	574
D. Marshalling	575
E. Bona Fide Purchaser Defense	575
<b>27. Causes of Action Against Third Parties</b>	<b>582</b>
<b>28. Barring of Remedies</b>	<b>593</b>
A. Introduction	593
B. Consent and Ratification	593
C. Equitable Estoppel	596
D. Statutes of Limitations and Laches	598
<b>INDEX</b>	<b>607</b>